Consideration of Documents Protected Under Internal Revenue Code Section 6103

EXECUTIVE SESSION

BEFORE THE

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

JUNE 22, 2023

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NOTICE OF MEETING

COMMITTEE ON WAYS AND MEANS U.S. HOUSE OF REPRESENTATIVES

June 20, 2023

Dear Committee Member:

Chairman Smith has scheduled a meeting to be held in Room 1100 Longworth House Office Building on Thursday, June 22, 2023, at 8:00 am.

Consideration of:

• Documents protected under Internal Revenue Code section 6103.

Respectfully,

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Mark Roman Staff Director

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EDTR HOFSTAD

MEETING ON DOCUMENTS PROTECTED UNDER INTERNAL REVENUE CODE SECTION 6103 Thursday, June 22, 2023 House of Representatives, Committee on Ways and Means, Washington, D.C.

The Committee met, pursuant to call, at 8:02 a.m., in Room 1100, Longworth House Office Building, Hon. Jason Smith [Chairman of the Committee] presiding. Chairman <u>Smith.</u> The Committee will come to order.

Mr. Smith, you are recognized for a motion.

Mr. <u>Smith of Nebraska.</u> Mr. Chairman, I ask unanimous consent that if the committee votes to submit to the House any information, the entire transcript of today's executive session proceedings be made public upon completion of our meeting.

Chairman <u>Smith.</u> Without objection, so ordered.

The gentleman from Arizona, Mr. Schweikert, is recognized for a motion.

Mr. <u>Schweikert.</u> Mr. Chairman, given the sensitivity surrounding confidential taxpayer information, pursuant to House rule XI(2)(G)(i), I move that the committee enter into closed executive session for consideration of the material protected under the Internal Revenue Code 6103.

Chairman <u>Smith.</u> The question is on entering into closed executive session for consideration of materials protected under Internal Revenue Code section 6103.

All those in favor, signify by saying aye.

All opposed, say no.

In the opinion of the chair, the ayes have it.

At this point, I ask the members of the public, the press, Member office staff, and non-designated committee staff leave the room so we can enter into closed executive session.

The committee is now in executive session. And, under House rule XI, clause (2)(K)(vii), evidence taken in executive session may not be released or used in public sessions without authorization of the committee.

We are in executive session because the matters and materials under discussion contain confidential taxpayer information protected by section 6103 of the Internal Revenue Code.

Pursuant to section 6103(f)(4)(A), as chairman, I have designated the Members and staff in this room as my agents for the duration of this executive session.

At this point, designated staff will distribute the materials under consideration.

The Ways and Means Committee is specially charged with jurisdiction over the Internal Revenue Code and the Internal Revenue Service. We play a unique role in ensuring that tax laws are enforced fairly, that the IRS lives up to its mandates as an impartial tax enforcer, and that Americans can trust that the government is not weaponized against them while special favors flow to the wealthy and well-connected.

Before we begin, I would like to remind those in this room that during today's meeting we will discuss confidential tax information protected by Internal Revenue Code section 6103. Unauthorized disclosure of tax information is a felony and is punishable by a fine of up to \$5,000 or imprisonment of not more than 5 years.

Given the potential consequences for improper disclosure, the Committee takes the protection of this information extremely serious.

That brings us to today's session on a deeply sensitive matter that concerns government agency misconduct in a high-profile case.

When serious problems are brought to us, we must act to address those problems. We must also ensure transparency when it comes to allegations of government abuse, with a specific focus on the IRS.

Two credible IRS whistleblowers have come forward, at great risk to themselves, to disclose allegations of wrongdoing within both the IRS and the Department of Justice. This type of whistleblower information would typically be made public, but section 6103 puts an additional disclosure restriction on taxpayer information.

That is why we are here today. Only the Ways and Means Committee has the ability to legally report this information to the full House of Representatives and thereby

make it known to the public.

We believe the material we are discussing today is of public interest and brings attention to potential need for legislative reforms. Our action today can also deter other misconduct by the IRS and the Department of Justice. Further whistleblowers will be encouraged and empowered to come forward with the work we do today.

Today, we consider the tax investigation of an individual taxpayer. This investigation opened in November of 2018 as an offshoot of a separate corporate investigation by the IRS.

Let me emphasize, the issue before us is an investigation in the ordinary course of work at the IRS. It was not ordered by any individual, any chairman, or political entity. And it is only before us today because two whistleblowers came forward voluntarily after finding serious misconduct in that investigation they were both working on.

The tax years at issue are over 2014 to 2019, where the IRS whistleblowers state the agency recommended charges against the taxpayer that include attempt to evade or defeat tax, a felony; fraud or false statements, another felony; and willful failure to file returns, supply information, or pay tax.

The owner of those tax returns is Hunter Biden.

According to whistleblower testimony, global income streams to Mr. Biden and his associates from Ukraine, Romania, and China totaled \$17.3 million from 2014 to 2019. Mr. Biden personally received \$8.3 million, as detailed in the transcripts. The whistleblowers confirmed that the amount of unreported tax -- and this is their conservative estimate -- is \$2.2 million.

Whistleblowers allege foreign payments to Mr. Biden include \$664,000 from Chinese state energy company HK, a large diamond worth \$80,000, and a Porsche worth \$142,000. These payments are just a fraction of the total, but they provide insight into a world of wealth and influence that no ordinary American would recognize.

Despite what the whistleblowers indicate was a clear-cut case for tax liability on these payments, they found themselves hamstrung internally by IRS officials as well as prosecutors and the Department of Justice.

The whistleblowers, in their testimonies in front of every Member today, detail a lack of U.S. attorney independence, recurring unjustified delays, unusual actions outside the normal course of an investigation, a lack of transparency across the investigation and prosecution team, and bullying and threats from the defense counsel.

Recurring unjustified delays pervaded the investigation, including in authenticating a WhatsApp message between Hunter Biden and Chinese officials. The whistleblowers revealed that IRS investigators were told by U.S. Attorney Lesley Wolf that, quote, "there is no way," close quote, a search warrant for evidence would get approved because the evidence would be found in the guesthouse of former Vice President Biden.

IRS whistleblowers told this committee that crucial information about the investigation was divulged to Hunter Biden's attorneys. For example, even as investigators had probable cause to search a northern Virginia storage unit in which Hunter Biden had stored files, attorneys for Biden were made aware prior to any search.

These whistleblowers reported that the U.S. attorney of Delaware, David Weiss, tried to bring charges in the District of Columbia around March of 2022 and was denied. Weiss sought special counsel status from the DOJ in the spring of 2022 and was denied. Weiss sought to bring charges in the Central District of California in the fall of 2022 and had that request denied in January of 2023.

We found both whistleblowers to be very credible. They tried multiple times to internally sound the alarm at the IRS and raise concerns with the DOJ prosecution team.

Their concerns were not given fair consideration.

These individuals are risking their careers and reputations because they have nowhere else to go to do what they know is the right thing.

These whistleblowers have faced almost immediate retaliation. They have recently been removed from the investigation at the request of DOJ. One of the whistleblowers was overlooked for a position when he was more qualified than the candidate selected by IRS leadership. And roadblocks have appeared in the course of their other unrelated investigations.

Our solemn duty today is to consider the merits of presenting these materials to the full House of Representatives. I believe that we must do so. The information is clearly in the public interest, as it relates to misconduct within Federal agencies. It is crucial that we deter future misconduct, particularly at the IRS and DOJ, when it comes to tax matters.

Other whistleblowers may come forward as a result of today's action, which we should welcome. As we consider the need for legislative reforms that protect against interference and favoritism, we must protect whistleblowers who shine a light on such abuses.

The scales of justice cannot be tipped in favor of the wealthy and the politically connected. No one is above the law.

I look forward to the discussion today.

And before I yield to the ranking member for an opening statement, I ask that all member opening statements be included in the record.

Without objection, so ordered.

Ranking Member Neal, you are recognized for an opening statement.

Mr. <u>Neal.</u> Thank you, Mr. Chairman.

I sat before this committee late last year, using the same responsibility of the chairman, to pursue a very serious legislative purpose. That is not what is being done this morning.

As I said then, we all come to the Ways and Means Committee in search of creating a fairer Tax Code. And for me, that means our tax laws are applied evenly and that everyone should pay their fair share.

Congress serves as a check on the executive branch, and our committee is entrusted with the oversight of our revenue system. But we are not -- I repeat, we are not -- a law enforcement entity. And, today, it seems that our colleagues have checked that responsibility at the door and proceeded with partisanship on the way in.

You have already heard comparisons to last year, but it is a false equivalency. For our part, and for my part for sure, we exercised restraint, always stuck to the facts, and never previewed our work in the press. Not one moment was leaked from this room. Nor did I give in to the urges of the edges of my own party. We conducted a thorough investigation and were only granted this authority after our purpose was affirmed by the United States Supreme Court.

When we won that case, the courts were clear. Let me quote: "There is no general authority to expose the private affairs of individuals without justification in terms of the functions of Congress." Further, and I quote, "there is no congressional power to expose for the sake of exposure."

That is what is being done this morning.

I question whether they even have a legitimate legislative purpose for exposing the confidential tax records of a private citizen. The bar for this type of exposure is exceedingly high for us, and it should remain so.

If the alleged purpose is to expose misconduct or maladministration, it could have

been done without the breadth of tax records that are before us today. This is a pretextual, gone-too-far, overstated power being abused by the committee.

These courts have been clear that Congress cannot exercise its investigative powers for the purpose of law enforcement, because the power of law enforcement is vested in the executive and judicial branches. This committee is not a law enforcement body. We are a legislative body. The committee has no independent power to enforce tax laws against a private citizen, much to the disappointment of the majority this morning.

Let's get the facts straight. The tax case is being handled by the Department of Justice and a Trump-appointed U.S. attorney for the District of Delaware. It should remain there.

And the allegations of retaliation that have been referred to the Treasury Inspector General for Tax Administration and to the Department of Justice Inspector General should proceed.

We must allow these law enforcement agencies to complete their work. This includes interviewing more than 50 other government employees named in the transcripts and verifying the attached exhibits, including those produced by the majority from unknown sources.

And unknown sources are just the beginning of the red flags here. Testimony was recanted just days ago. The claims of retaliation have been referred to TIGTA and the DOJ Inspector General, and the majority can't wait for the investigators to release their findings.

So, who have been named in these transcripts? They haven't even been interviewed, nor have they been given the opportunity to defend their names. We are talking about the Nation's law enforcement agents, which, having served as mayor of a big city, I have the greatest regard for. What happened to the argument about backing the blue? We see today that we only back the blue when it fits political goals.

Today is about the allegations of two employees, one who spoke on his own free will and the other at the request of our chairman. It is a start, but this doesn't justify the release of a private citizen's taxpayer information. There is a long way to go before this should even be considered an investigation, let alone worthy of this committee's examination.

I have to wonder out loud, why not wait to gather more information or hear back from TIGTA? Besides the fact that it seems to be impeachment week for our colleagues, waiting risks it will lose the spotlight, and certainly it might not fit their cherry-picked political narrative.

The American people didn't deliver a majority to them so they could heckle law enforcement and bemoan the legitimate work of a Trump-appointed U.S. attorney.

If only they could approach legislating with the same vigor, we would actually get some things done here. This is about partisanship.

And let me say, nobody on the Democratic side wants to get in the way of what the Justice Department might proceed to do. We want this aired in public at the right moment by the Justice Department and the proper authorities. The Ways and Means Committee is not a law enforcement committee.

And I yield back my time.

Chairman <u>Smith.</u> The Committee will now proceed to consideration of the documents before you, which include two transcripts of voluntary interviews of two whistleblowers conducted by the Committee, as well as supplemental information provided by the whistleblowers after the interviews, and a letter from IRS Commissioner Werfel dated June 7, 2023.

The materials have been available for Member review in the committee office since 8:00 a.m. on June 21st.

I will now turn to Sean Clerget, Chief Oversight Counsel, to provide a brief description of the materials for consideration. I would ask that members hold their questions until after his presentation.

Mr. Clerget, you are recognized.

Mr. <u>Clerget.</u> Thank you.

Chairman Smith, Ranking Member Neal, members of the committee, the documents Chairman Smith is presenting to the committee today contain information related to Internal Revenue Code section 6103. Section 6103 makes tax returns and return information confidential subject to specific authorizations or exceptions in the statute.

The statute anticipates and allows for whistleblowers to come forward and share information with Congress under section 6103(f)(5) if the whistleblower believes such return or return information may relate to possible misconduct, maladministration, or taxpayer abuse.

Specifically, that statute permits a person with access to returns or return information to disclose it to the Committee on Ways and Means or any person designated by the Chairman to receive such information.

Our taxpayer privacy laws also allow for a process by which this committee can

receive information, consider it, and submit it to the House of Representatives. That process has been used several times in the Committee's history and twice in recent years.

In 2019, the committee considered and voted to submit historical materials from the Joint Committee on Taxation that contained tax information related to President Nixon.

Even more recently, on December 20, 2022, the Committee voted to release former President Trump's full tax returns for multiple years, along with a package of other documents that included audit files related to those tax returns.

The materials before you today arose out of voluntary testimony provided by two whistleblowers employed by the Internal Revenue Service.

Chairman Smith, Ranking Member Neal, and the chairs and ranking members of other House and Senate committees received a letter on April 19, 2023, from counsel for an IRS criminal supervisory special agent, who I will refer to as Whistleblower 1.

That letter outlined at a high level the nature of information the individual wished to share with the committee. The letter indicated that Whistleblower 1 wanted to share information that would, one, contradict sworn testimony provided to Congress by a senior political official; two, identify unmitigated conflicts of interest; and three, provide examples of preferential treatment based on politics.

Counsel for Whistleblower 1 offered to provide a proffer to the Committee to outline the nature of the testimony his client could provide. On May 5, 2023, the Committee on Ways and Means staff received that attorney proffer, which disclosed that the subject of the investigation was Robert Hunter Biden.

Majority and minority staff were designated by the Chairman under section 6103, and both majority and minority staff were present at the attorney proffer.

After receiving the proffer, a voluntary interview of Whistleblower 1 was

scheduled for later in May.

On May 15, 2023, the Committee on Ways and Means received another letter from Whistleblower 1's legal counsel notifying the committee that Whistleblower 1 and his entire investigative team had been removed from the ongoing and sensitive investigation about which Whistleblower 1 sought to make a disclosure to Congress.

The letter notes that the IRS employee was informed that the removal occurred at the request of the U.S. Department of Justice.

Following that removal, the Committee learned that another IRS employee had retained counsel and may be interested in providing additional relevant information to the Committee.

On May 24, 2023, the Committee received a letter from an IRS criminal investigator's legal counsel, who I will refer to as Whistleblower 2, noting that that individual shares the concerns about the management of a high-profile case raised by Whistleblower 1.

The letter also notes that, despite Whistleblower 2's good-faith efforts to engage in a dialogue with supervisors at the IRS about this case and the management of the case to date, this had resulted in no constructive engagement. Rather, IRS management had responded in a manner that had raised significant alarm for Whistleblower 2 of possible retaliation.

On May 26, 2023, and June 1, 2023, committee staff conducted voluntary transcribed interviews of Whistleblowers 1 and 2. Each interview lasted for approximately 7 hours.

To ensure a complete and thorough disclosure was made by the whistleblowers, information protected by section 6103 was discussed. Majority and minority staff had equal opportunity to ask questions of the whistleblowers and were able to ask questions until none remained.

Whistleblower 2 asked to remain anonymous and asked that the committee redact his name and other personal identifiers proposed by him.

Following the interviews, each whistleblower and their counsel were given the opportunity to review the transcripts and make any suggested technical or clarifying edits. Majority and minority staff also reviewed the transcript and made technical or clarifying edits. Majority and minority staff worked collaboratively on this process.

On May 16, 2023, the day following the removal of the IRS investigative team, Chairman Smith sent a letter to Commissioner Werfel requesting an urgent briefing on the retaliation allegations. Commissioner Werfel agreed to brief the chairman.

On May 22, 2023, the Committee received another letter from Whistleblower 1's legal counsel notifying the Committee that the IRS proceeded to take further actions against the IRS employee.

On May 31, 2023, IRS Commissioner Werfel briefed Chairman Smith in person at the Chairman's request.

On June 7, 2023, the Commissioner sent a letter to Chairman Smith, with a copy also to Ranking Member Neal. That letter followed up on the numerous concerns Chairman Smith had raised about alleged retaliation against IRS employees.

The documents presented today for the Committee's consideration include the following: a transcript of the voluntary interview of Whistleblower 1; an affidavit further clarifying Whistleblower 1's testimony; a transcript of the voluntary interview of Whistleblower 2; a letter further clarifying Whistleblower 2's testimony; a letter from IRS Commissioner Werfel to Chairman Smith, copied to Ranking Member Neal, dated June 7, 2023.

The materials include minor redactions covering the following topics:

Whistleblower 2's name and a small number of other personal identifiers; the names of the children of the subject of the investigation at issue; personally identifiable information, including phone numbers, signatures, physical addresses, email addresses, account numbers, and similar information.

Staff names are also either redacted or, where possible, swapped out with "Majority Counsel" or "Minority Counsel" for clarity.

The allegations received by the committee raise issues that fall squarely within the Committee's jurisdiction and also raise issues that may require additional oversight and/or legislative solutions.

That concludes my overview of the documents presented under section 6103. Thank you, and I am happy to take your questions.

Chairman Smith. Are there any technical questions?

Mr. Neal.

Mr. <u>Neal.</u> Thank you, Mr. Chairman.

Mr. Clerget, you used words like "may," and "alleged." Is that your position? You qualified your comments about "may" and "alleged." You didn't offer any justification for what we are about to do this morning.

Mr. <u>Clerget.</u> I believe it is for the Committee to consider whether they would like to report these materials to the House. My position is not relevant.

Mr. <u>Neal.</u> Okay.

So, Mr. Clerget, does it seem as though, given the fact that Hunter Biden is about to plead guilty to a series of charges that have been brought by the Justice Department, two of which include tax records, the U.S. attorney and the Justice Department have reviewed some of the tax records that we are being asked to address this morning?

Mr. <u>Clerget.</u> I don't know.

Mr. <u>Neal.</u> We do. How could you bring a case based on tax and not think that the Justice Department hadn't reviewed those tax forms?

Chairman Smith. Further technical questions?

Mr. Estes?

Mr. <u>Estes.</u> So, in this material, as we have tried to look through it, how many years does it appear in the material that apparently Hunter Biden, Sportsman, whatever the terminology we want to use through here, did not pay taxes for?

Mr. <u>Clerget.</u> The whistleblowers testified that the tax years at issue were 2014 through 2019.

Mr. <u>Estes.</u> So, 5 years' worth of taxes that he did not pay taxes for?Mr. Clerget. That is correct.

Mr. <u>Estes.</u> And what was the dollar amount of estimated unpaid taxes by the whistleblowers?

Mr. <u>Clerget.</u> I believe the Chairman cited it in his opener. One of the whistleblowers estimated \$2.2 million.

Mr. <u>Estes.</u> And does it say anywhere in here that -- obviously, the statute of limitations has run out for a couple of those years -- But does it say anywhere in here that there was information given to the IRS from the DOJ or the U.S. Attorney's Office that they should initiate an audit for those years before the statute of limitations ran out?

Mr. <u>Clerget.</u> I will say that the materials are before the members of the Committee and speak for themselves. I do not believe that the whistleblowers testified that there was a civil audit.

Mr. Estes. Okay.

And, in here, there are several different meetings that are referred to, including -- let me flip through here, one of the statements in the -- or in the affidavit from Whistleblower 1, there was some information provided that apparently Attorney General Barr had given some information to -- or had referred recently that he had given information to the U.S. Attorney's Office in Delaware for them to follow up on. But there is no information anywhere that that got to the IRS agents so that they could initiate audits?

I mean, I am thinking specifically of point 4 and point 5 in the affidavit.

Mr. <u>Clerget.</u> That is my understanding of Whistleblower 1's affidavit.

Mr. Estes. All right. Thank you.

I know I am picking around on different parts in here. Sorry to do this. But in some of the material that we had a chance to look at beforehand, there was a reference to what was called exhibit 10, which referred to an October 7, 2022, meeting?

Mr. <u>Clerget.</u> Yeah.

Mr. Estes. And I have two or three questions around that.

What was mentioned in there about -- or the issue that Merrick Garland versus Weiss had in terms of authority to initiate the lawsuit -- or initiate a case, in terms of the authority that they had?

Mr. <u>Clerget.</u> I am sorry. Can you repeat the question?

Mr. <u>Estes.</u> I am trying to look in there -- it made some reference, as I was reading through it, about whether the U.S. attorney had the authority to actually do the prosecution or whether that was being controlled by the Attorney General.

Mr. <u>Clerget.</u> I would say that the exhibit and the testimony of the whistleblower speaks for itself.

Mr. Estes. All right.

And so, it looks like -- and I don't know if it is spelled out in here. The way I read some of the testimony, it looks like some things were slow-walked, particularly dating

back to the September 3, 2020, meeting and why they did not proceed forward with that into the 60-day period before the election.

Is that the right -- or a relatively right reading of that material?

Mr. <u>Clerget.</u> I want to defer to the Committee on how they read and consider these materials.

Mr. Estes. All right. Thank you.

I yield back.

Chairman <u>Smith.</u> Thank you.

Mr. Thompson is recognized for technical questions.

Mr. <u>Thompson.</u> Thank you, Mr. Chairman.

Mr. Clerget, in your testimony -- in your opening remarks, you mention that DOJ had requested that, I think it was, Whistleblower 1 be removed from the case?

Mr. <u>Clerget.</u> That is the communication we received from Whistleblower 1's counsel.

Mr. <u>Thompson.</u> Where can I find that in the documents that we had a chance to preview? Because I didn't see that.

Mr. <u>Clerget.</u> I believe that letter was sent to the Ranking Member. It is not part of the packet.

Mr. <u>Thompson.</u> But it was, it is, an allegation by Whistleblower 1, or you have documented this?

Mr. <u>Clerget.</u> That is correct; it is an allegation by Whistleblower 1.

Mr. <u>Thompson.</u> So it is an allegation, not documented. Okay.

In your transcript -- or, in your work, does the transcript of your interview with

Whistleblower 1 reference an individual named Lesley Wolf?

Mr. <u>Clerget.</u> I would have to check. I believe so, yes.

Mr. Thompson. You believe so? Did the Committee interview Ms. Wolf?

Mr. <u>Clerget.</u> No, sir.

Mr. Thompson. You didn't interview her?

Mr. <u>Clerget.</u> No, sir.

Mr. Thompson. Did you make any attempt to contact Ms. Wolf?

Mr. <u>Clerget.</u> No, sir.

Mr. <u>Thompson.</u> Did you send her an email or send her a letter or make a phone call?

Mr. <u>Clerget.</u> No, sir.

Mr. Thompson. Why not?

Mr. <u>Clerget.</u> I work at the discretion of the Chairman, and so it is not for me to say why certain steps were taken or not taken.

Mr. <u>Thompson.</u> Does the transcript of your interview with Whistleblower 1

reference an individual named Jack Morgan, a DOJ tax attorney?

Mr. <u>Clerget.</u> Yes, sir.

Mr. Thompson. Did the Committee interview Mr. Morgan?

Mr. <u>Clerget.</u> No, sir.

Mr. Thompson. Did the Committee make any attempt to contact Mr. Morgan?

Mr. <u>Clerget.</u> No, sir.

Mr. <u>Thompson.</u> Did the Committee send Mr. Morgan an email or a letter or place a phone call to him?

Mr. <u>Clerget.</u> No, sir.

Mr. Thompson. Why not?

Mr. <u>Clerget.</u> It is not for me to speak to why.

Mr. <u>Thompson.</u> Does the transcript of your interview with Whistleblower 1

reference an individual named Veena Luthra, the supervisor of CT Counsel line?

Mr. <u>Clerget.</u> I believe so.

Mr. Thompson. Did the Committee interview Ms. Luthra?

Mr. <u>Clerget.</u> No, sir.

Mr. <u>Thompson.</u> And Ms. Luthra is the supervisor of Christine Steinbrunner. Did the Committee interview Ms. Steinbrunner?

Mr. <u>Clerget.</u> No, sir.

Mr. <u>Thompson.</u> Did the Committee make any attempt to contact either one of them?

Mr. <u>Clerget.</u> No, sir, not as of yet.

Mr. <u>Thompson.</u> You didn't send a letter, send an email, or make a phone call to either one of those?

Mr. <u>Clerget.</u> No, sir.

Mr. <u>Thompson.</u> So, the committee, in this interview of a pretty important issue, didn't contact any of the three people that I mentioned, didn't substantiate from the Department of Justice whether or not they are the ones that made the request to remove Whistleblower 1 from the case, nor did you talk to any of the 50-some-odd government employees that the whistleblower mentioned in this interview?

Mr. <u>Clerget.</u> Sir, I would say that --

Mr. <u>Thompson.</u> Just -- it is yes or no.

Mr. <u>Clerget.</u> No, not as of yet.

Mr. Thompson. Okay. So, "as of yet." So this is still ongoing?

Mr. <u>Clerget.</u> The Committee's oversight work? Yes, I would say the

Committee's oversight work is ongoing.

Mr. <u>Thompson.</u> So it sounds to me like we are pretty premature in having this

hearing on something as serious as this. I would suggest that this thing is

half-baked -- maybe not. Maybe it is a quarter-baked. But it is certainly not ready for prime time, nor should we be in this committee hearing room dealing with this today.

I yield back the balance of my time.

Chairman <u>Smith.</u> Thank you.

Mr. Clerget, let's touch on a few conversations. Mr. Thompson tried to bring up the retaliation aspect of Whistleblower 1. How was the Ways and Means Committee notified that he had been retaliated [against]?

Mr. <u>Clerget.</u> The committee received a letter addressed to both the Chairman and the Ranking Member stating the facts and --

Chairman <u>Smith.</u> So, it is a publicly documented letter to myself and the Ranking Member, plus Senators Wyden and Crapo, correct?

Mr. <u>Clerget.</u> Correct.

Chairman <u>Smith.</u> Okay. Make the record reflect that.

Mr. Thompson. Mr. Chairman, could I --

Chairman <u>Smith.</u> I am not yielding.

My other technical questions are: Whistleblower 2, in his deposition that is before us right now, specifically talked about the retaliation and being removed from the case by the IRS. Is that correct?

Mr. <u>Clerget.</u> That is correct.

Chairman Smith. Thank you.

In regard to what we are discussing to release, are there any individual taxpayers' tax filings being suggested to be released?

Mr. <u>Clerget.</u> There are no tax returns in the information here.

Chairman Smith. So this is not like the Donald Trump tax returns. This is about

addressing a whistleblower that contacted us, correct?

Mr. <u>Clerget.</u> That is correct.

Chairman Smith. So one other question. It has been noted that

Whistleblower 1 came to us voluntarily. He contacted our office. Is that correct?

Mr. <u>Clerget.</u> That is correct.

Chairman Smith. Whistleblower 2, how did he come to our office?

Mr. <u>Clerget.</u> The committee received information that he was represented by counsel and may have information relevant to the allegations of retaliation.

Chairman <u>Smith.</u> And did he want us, if we wanted to seek additional information, just to ask him?

Mr. <u>Clerget.</u> Yes.

Chairman Smith. And that is what we did?

Mr. <u>Clerget.</u> Correct.

Chairman Smith. And that is why he came in, paying for his own flight?

Mr. <u>Clerget.</u> Correct.

Chairman Smith. Paying for his own hotel?

Mr. <u>Clerget.</u> Correct.

Chairman Smith. And on his free will?

Mr. Clerget. Correct.

Chairman <u>Smith.</u> Let the record reflect that.

Ms. Sanchez, you are recognized.

Ms. <u>Sanchez.</u> Thank you, Mr. Chairman.

With respect to Whistleblower 2's testimony, Mr. Clerget, at the beginning of the testimony, Whistleblower 2 states, "I wanted to start out by saying I'm coming here to you today after someone from your committee reached out to my counsel to come in and

testify."

Can you tell me, when did the Committee reach out to this individual to testify?

Mr. <u>Clerget.</u> The Committee received a letter from counsel for Whistleblower 2 on May 24th. The Committee reached out to that counsel -- I don't know the exact time but shortly before that letter.

Ms. <u>Sanchez.</u> Okay.

And for the sake of clarity, Whistleblower 2 did not contact the Committee via the whistleblower portal on the Committee's website, did they?

Mr. <u>Clerget.</u> That is correct.

Ms. <u>Sanchez.</u> Okay. And the Committee proactively sought the individual's testimony?

Mr. Clerget. The Committee --

Ms. <u>Sanchez.</u> He stated he came in because of the request from the Committee.

Mr. <u>Clerget.</u> The Committee reached out to counsel about whether his client had relevant information.

Ms. Sanchez. Okay.

I am looking at this letter addressed to Chairman Smith and Ranking

Member Neal. "On May 23rd, I was contacted by the Ways and Means Committee staff,

asking about an individual I represent that they understood may have information of

interest to the committee's work."

That is from counsel, correct?

Mr. <u>Clerget.</u> I don't have it in front of me, but that sounds correct.

Ms. Sanchez. Okay. Thank you.

I would ask unanimous consent to make this part of the record.

Chairman <u>Smith.</u> Without objection.

[The information follows:]

******* COMMITTEE INSERT ******



Zerbe, Miller, Fingeret, Frank & Jadav, LLP 3009 Post Oak Boulevard, Suite 1700 Houston, Texas 77056 Tel: 713 350 3529 * Fax: 713 350 3607

May 24, 2023

The Honorable Jason T. Smith Chairman Committee on Ways and Means U.S. House of Representatives Washington, DC 20515

The Honorable Richard Neal Ranking Member Committee on Ways and Means U.S. House of Representatives Washington, DC 20515

Dear Chairman Smith and Ranking Member Neal:

On May 23, I was contacted by the Ways and Means Committee staff asking about an individual I represent that they understood may have information of interest to the Committee's work.

As a follow-up to that request, I am authorized to say that I represent a career IRS Criminal Investigator who was the case agent of a high-profile sensitive investigation. My client was the case agent of this case since its inception, until he was recently removed by the IRS at the request of the Department of Justice. My client was supervised by the individual – the IRS Criminal Supervisory Special Agent -- who is the subject of the April 19, 2023 letter you received from Mr. Mark Lytle.

My client shares the concerns about the management of this case that were raised by the IRS Criminal Supervisory Special Agent and outlined in the April 19, 2023 letter by Mr. Lytle. My client's concerns are based on repeated first-hand observations from his work as the case agent – some observations that were made together with the Criminal Supervisory Special Agent as well as observations that were made independent of the Criminal Supervisory Special Agent.

To be clear, my client enjoys his job at IRS CI and wants to continue in his position and career. His sudden removal from a case he had labored on for hundreds of hours for a period of years – without any justification or explanation – hurt him deeply. My client hopes, and continues to hope, that a number of the issues and concerns regarding the management of this case can be resolved internally within the IRS. Other issues of concern would require broader authority, beyond the IRS, to address. Unfortunately, despite my client's good-faith efforts to engage in a dialogue with his supervisors at the IRS about this case and the management of this case – to date, this has resulted in no constructive engagement. To the contrary, IRS management has responded in a manner that has understandably raised significant alarm for my client of possible retaliation.

Despite my client's continued hope that this matter, at least partially, could be resolved internally, the request from the Committee is one that my client views as a federal employee he should accept. My

client's stated desire is to make his disclosures in a non-partisan manner on a bicameral basis. As you know, 26 USC 6103(f)(5) provides for disclosures of protected information by tax whistleblowers to the two tax-writing Committees. I ask for assurances – particularly given the problematic actions already taken by IRS management – that he be afforded full protections by 5 USC 2302(b)(8)(C).

To ensure that my client can be responsive to the Committee – and also assist my client in ensuring his disclosures are protected and within the law – I respectfully request that your Committee work with me to facilitate sharing my client's information with Congress legally and with the benefit of informed assistance of his counsel. My understanding is that the Committee has provided a letter to counsel for the IRS Criminal Supervisory Special Agent which facilitated this result. I respectfully request consideration by the Committee that a similar letter be provided.

Thank you for your time and consideration.

Sincerely,

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Ms. <u>Sanchez.</u> So, in fact, the chairman asked the individual to come in and testify, through his counsel?

Mr. <u>Clerget.</u> The Chairman, through staff, reached out to counsel and --

Ms. <u>Sanchez.</u> And requested that the individual come and testify.

Mr. <u>Clerget.</u> Yes.

Ms. Sanchez. And how was this individual chosen to come in and testify?

Mr. <u>Clerget.</u> The Committee received information that this individual was represented by counsel and may wish to come in and testify.

Ms. <u>Sanchez.</u> Okay. And why did you not ask the other 50 or so individuals named by Whistleblower 1 to be interviewed?

Mr. <u>Clerget.</u> It is not for me to speak to why, other than to say that both of these whistleblowers came in and testified voluntarily.

Ms. <u>Sanchez.</u> Okay. No, but one came to testify after they were requested to come and testify.

Mr. <u>Clerget.</u> They --

Ms. <u>Sanchez.</u> He didn't contact the committee and ask to come in and talk to you all. And --

Mr. Clerget. Both whistleblowers sat for --

Ms. <u>Sanchez.</u> -- he didn't come in through the portal either.

Mr. <u>Clerget.</u> Both whistleblowers sat for voluntary transcribed interviews.

Ms. <u>Sanchez.</u> But one was asked to come in. And 50 or so other individuals

that were mentioned in testimony of Whistleblower 1 never were contacted.

Well, it is good to know --

Mr. <u>Clerget.</u> Not as of yet.

Ms. <u>Sanchez.</u> -- that the committee has, when it believes it can fit their narrative,

taken the initiative to contact witnesses. I am glad we learned that this is something that the committee is capable of doing.

It is clear to me that the committee has no interest in doing a real investigation into this issue, because it seems to me that the witnesses are cherry-picked in service of being able to release embarrassing information about a private citizen.

Mr. Clerget, I would like to ask you a question about the exhibits referenced in the Whistleblower 1 transcript.

On page 58, you hand what you call exhibit 4 to the whistleblower, and you ask, "Have you seen this document before?" And the whistleblower replies, "I haven't seen it in this form, but I've seen excerpts of this document."

Did the majority receive this document from the whistleblower?

Mr. <u>Clerget.</u> No.

Ms. <u>Sanchez.</u> Because the whistleblower had never seen it.

Mr. <u>Clerget.</u> Correct.

Ms. <u>Sanchez.</u> Okay. Of course not, the witness stated that they had only seen excerpts.

And did the majority share this document with minority counsel prior to the

interview when it was presented to the whistleblower?

Mr. <u>Clerget.</u> I don't believe so.

Ms. <u>Sanchez.</u> It wasn't.

And then exhibit 5, majority counsel asked the whistleblower whether they had seen this exhibit before. And what is the whistleblower's answer? It is on the top of page 61.

Mr. <u>Clerget.</u> I would say, the document speaks for itself.

Ms. <u>Sanchez.</u> But my question is, had the whistleblower seen this exhibit

before? His answer is on the top of page 61.

Mr. <u>Clerget.</u> Would you like me to read from the transcript?

Ms. <u>Sanchez.</u> It is a simple yes or no answer. You don't have to read from the

transcript. I am asking a very simple question. Had he seen exhibit 5 before?

Mr. <u>Clerget.</u> I don't believe so.

Ms. Sanchez. Okay. The answer is no.

And, in fact, later, on page 85, the whistleblower states, "And if I wasn't taken off the case, I would have been tainted by this document."

So, clearly, you surprised the whistleblower with this exhibit. Is it safe to assume that you also surprised minority counsel with this exhibit as well?

Mr. <u>Clerget.</u> I don't know whether minority counsel was surprised.

Ms. <u>Sanchez.</u> Do you know whether they received it prior to the interview?

Mr. <u>Clerget.</u> I don't know.

Ms. <u>Sanchez.</u> I believe the answer is, no, they didn't receive either of the

exhibits. And the whistleblower hadn't seen them either, which is why the

whistleblower was surprised, and minority counsel was surprised as well.

Mr. <u>Clerget.</u> It is standard practice in any transcribed interview, deposition.

Ms. <u>Sanchez.</u> Not necessarily in a congressional transcribed interview.

And with respect to both of these exhibits --

Chairman <u>Smith.</u> Ms. Sanchez, your time has expired.

Mr. Buchanan is recognized for technical questions.

Mr. <u>Buchanan.</u> Mr. Clerget, are you aware of any request by the minority staff to interview other people?

Mr. <u>Clerget.</u> No, sir.

Mr. <u>Buchanan</u>. Let me -- I just had a chance to look at the documents briefly

yesterday for 30 minutes, -- but I want to better understand, how did we get here?

I mean, in the sense that the IRS, you know, looks at these tax returns; they go to court. If you don't win, you go to another court. If they have a concern, they go maybe prosecute it in terms of a criminal action.

But what is the standard to get here, where we are at today? I know it is the whistleblowers. But how do you get here, you know, from there to here?

Because, obviously, the IRS is a big agency. There is always concern about the IRS doing the right thing. But I am just taking it from a business perspective and people that have gone to court, multiple levels. And then, obviously, the criminal aspect of it, they have the ability as well.

But how do you move from that world to this world, in a sense, from your standpoint?

Mr. <u>Clerget.</u> I can speak to how the whistleblowers, you know, arrived before the committee. They did so after raising concerns internally about the handling of this case for a number of years. And, eventually, after that process didn't go anywhere, they came to Congress to make these disclosures.

Mr. <u>Buchanan.</u> Okay.

So then they are working with the committee. When did this come up? Is it this year or so, from that standpoint?

So the mindset in terms of the committee, they just didn't think that the IRS was properly getting done. I mean, that is the idea. They didn't have the capacity to do it -- or decided, the whistleblowers, come up. So, I mean, there could be a lot of whistleblowers out there.

I just want to better understand -- I am just trying to understand --

Mr. <u>Clerget.</u> The whistleblowers sent a letter to the Chairman and the Ranking

Member stating that they had information to share.

And the process the Committee went through was, first, to receive an attorney proffer from the counsel for Whistleblower 1 to understand the nature of the testimony.

After hearing that attorney proffer, the Chairman determined that it merited a formal interview with the whistleblower, and the whistleblower came in and sat for a transcribed interview.

So that is how the process played out.

Mr. <u>Buchanan.</u> Yeah. I just think, Democrat or Republican, this needs to be a very, very high standard, in terms of anything getting here that the IRS can't deal with itself. Because it has a lot of capacity and a lot of ability.

I am not taking one side or the other on this, but it is frightening if you can get whistleblowers or anybody else in this process. Not to discount, you know, the whistleblowers here. I don't know -- I haven't read enough about it. But I am concerned about this whole process.

I yield back.

Chairman Smith. Mr. Larson is recognized.

Mr. Larson. Thank you, Mr. Chairman.

I want to associate myself with the remarks of the [Ranking Member].

And I want to yield to Representative Sanchez.

Ms. <u>Sanchez.</u> Thank you, Mr. Larson.

I would like to follow up on the line of questioning I was asking earlier about exhibits 4 and 5.

So I think we established that neither exhibit 4 nor 5 was presented to the witness prior to their deposition and it was not provided to minority counsel prior to the deposition. And on page 85, the whistleblower states, "And if I wasn't taken off the case, I would've been tainted by this document."

So, clearly, the whistleblower was surprised, as was minority counsel, because these documents were not provided in advance to either the witness or to the minority counsel.

And with respect to both of these exhibits, Mr. Clerget, neither of which were supplied by the whistleblower, can you tell me how the committee acquired them?

Mr. <u>Clerget.</u> I believe the documents are available via public sources.

Ms. <u>Sanchez.</u> So your testimony today is that those documents were acquired by the committee through public sources, even though they appear to be private emails?

Mr. <u>Clerget.</u> Yes.

Ms. <u>Sanchez.</u> And what assurances do we have that they are authentic? What assurances can you, the majority counsel who brought these exhibits to the interview and surprised the witness and surprised minority counsel with them, that these are not forgeries or just something off the internet or something that somebody's uncle posted on Facebook? How do we know that they are authentic?

Mr. <u>Clerget.</u> The witness was questioned about the document. I am not aware of anyone raising concerns about the authenticity of the document.

Ms. <u>Sanchez.</u> Did the witness authenticate the document? Because there is a line of questioning used to authenticate documentation in litigation and trials. Did you ask those questions of the witness to authenticate them?

Mr. <u>Clerget.</u> I don't believe so.

Ms. <u>Sanchez.</u> I believe the answer to that is no.

So, Mr. Chairman, I am sure that this is just one other indication of how shoddy and haphazard this so-called investigation is. And if the committee were really interested in actual answers, they wouldn't be googling evidence. They would conduct a real, serious, and thorough investigation and do things by the book.

Instead, I believe that this is just a pretextual sham to try to embarrass a private citizen. And we all know why you are so anxious to embarrass this particular private citizen: Because you wish to taint the President.

And, with that, I will yield back my time to Mr. Larson.

Mr. <u>Larson.</u> I thank the gentlelady.

And I did want to correct my comments. When I said I associate myself with the remarks, I meant Ranking Member Neal, who I often still refer to as "chairman."

I will yield 30 seconds to Mr. Thompson.

Mr. <u>Thompson.</u> Thank you, Mr. Larson.

I just want to go back. I tried to get clarification from the Chairman, but he wouldn't let me ask.

Mr. Chairman, all I was saying was that it was an allegation. No one is questioning that. No one questioned the whistleblowers making the allegations. But what we are saying is, none of it has been substantiated.

You know, there are a ton of allegations. Heck, your President claims he won the last election. I mean, we just can't do this based on something you pull off the internet or something that someone claims. There is a process that needs to be gone through to check this stuff out.

You haven't talked to DOJ. You haven't talked to any of the 50 witnesses or 50 names that were given to you by the whistleblower. This thing, as I said before, is not even half-baked; it is quarter-baked. And we should have a very legitimate review of this stuff, but not this. This is like kangaroo court stuff.

Chairman Smith. Here is the --
Mr. <u>Thompson.</u> I yield back.
Chairman <u>Smith.</u> You want to me to respond to that?
Mr. <u>Thompson.</u> Pardon?
Chairman <u>Smith.</u> You want me to respond to that?
Mr. <u>Thompson.</u> Certainly.
Chairman Smith. Okay.

For one thing, because of 6103 authority -- which we are the only committee that can grant transparency and public action to -- there are other committees of jurisdiction that are doing the oversight and looking at it. And in order for them to use information that we have, that they need to look at, and what they might need to be able to question, it requires us to make this public, because it is within our authority [under] 6103, so that it won't be half-baked so that we can get down to the bottom of it to make sure that --

Mr. <u>Thompson.</u> Reclaiming my time, thanks for acknowledging that it is half-baked.

But we don't need to do this to give the other committees of jurisdiction any oversight. They can check this stuff out. This is just throwing stuff up against the wall to see what sticks.

Chairman <u>Smith.</u> Your time has expired. And the other committees have no authority in order to get the information that we received from IRS whistleblowers, because we had to grant them the authority. They just talked to us.

Mr. Kelly is recognized.

Mr. <u>Kelly.</u> Thank you, Mr. Chairman.

Mr. Clerget, I want to make sure that both sides of this Committee understand the way this took place. I was looking last night about the timelines of everything that took place, and this was started on April 19, 2023.

The reason for that is because the Committee on Ways and Means received a letter from an Internal Revenue Service criminal supervisory special agent referred to as "Whistleblower 1"'s legal counsel requesting that the Committee investigate concerns the employee has regarding allegations of misconduct in the handling of a high-profile case.

That started on April 19th. On April 27th, there was further action. On May 5th, there was further action. On May 15th, there was further action. On May 16th, there was further action. On May 17th, there was further action. On May 22nd, there was further action. On May 24th, there was further action. On May 26th, there was further action. On May 31st, there was further action. On June 1st, there was further action. That was 43 days.

So am I to understand that only the majority sat in on any of this, taking in information from people?

And the time of those sessions? How long was it when you sat down and talked with people? And was it only you and only the majority that was there to listen?

Mr. <u>Clerget.</u> So, each transcribed interview lasted approximately 7 hours. Minority and majority staff were present and able to ask questions for as long as they wished.

Mr. <u>Kelly.</u> So it was completely handled the way it should be handled. Nobody was shut out of it, and the majority didn't have information that the minority was denied. The majority did not deny the minority to participate in the questioning of the whistleblowers.

Mr. <u>Clerget.</u> Correct. The minority had the opportunity to question the whistleblowers.

Mr. <u>Kelly.</u> So we have been down this road before. And it just always seems to me -- I guess this is when you strike the last word -- it depends on whose bull is getting

gored, as to how we handle those things.

But I just want to make sure, would you please repeat the fact that both majority and minority staff sat in on these interviews, which lasted approximately 7 hours, and they had the opportunity to ask questions at that time of either one of the whistleblowers? Is that true?

Mr. <u>Clerget.</u> That is correct.

Mr. <u>Kelly.</u> So they were never denied access to the material, they were never denied the opportunity to ask questions.

Mr. <u>Clerget.</u> That is correct.

Mr. <u>Kelly.</u> So I know she is blindfolded and holds a scale, but the scale is even. It is not tilted one way or the another.

Thank you so much for handling those interviews that way and including a minority that sometimes forgets about what has happened previously in other cases, similar to this, but not exact. And, as I said before, I guess it depends on whose bull is getting gored. It is unbelievable. If it wasn't for a double standard, there would be absolutely no standard at all.

Thank you for handling this the right way. The minority had as much opportunity to question the people who came in, the whistleblowers that came in. I don't know what took place then, because I haven't read all the different pages, but I will tell you this: Thank you for handling it the right way. This is refreshing in a government that sometimes denies you access to things. So I thank you so much.

And, Mr. Chairman, I yield back.

Chairman Smith. Mr. Panetta is recognized for technical questions.

Mr. <u>Panetta.</u> I thank you, Mr. Chairman.

Mr. Clerget, you are an attorney?

Mr. <u>Clerget.</u> Yes, sir.

Mr. <u>Panetta.</u> And have you ever tried a case in front of a jury?

Mr. <u>Clerget.</u> No.

Mr. <u>Panetta.</u> Okay. In trying a case in front of a jury -- I am a former prosecutor -- basically, you have the law, you have the facts, you put them together; that is how you present your case to a jury, okay?

Now, obviously, we know the law in this case is pretty serious, and that it is concerning the release of the taxes of a private citizen. And, basically, Kilbourn v. Thompson, a Federal case, says that, if it is done, it has to be done in aid of a legislative function, all right, and that you cannot do it if it seeks to expose for sake of just exposure.

Correct, Mr. Clerget?

Mr. <u>Clerget.</u> I have not reviewed that case recently, but I --

Mr. Panetta. Okay, so you don't know the law.

Mr. <u>Clerget.</u> -- that is my understanding.

Mr. <u>Panetta.</u> Okay. Got it.

Now, let's talk about the facts, though. Obviously, your job was to gather the facts, correct?

Mr. <u>Clerget.</u> That is part of my job, yes.

Mr. <u>Panetta.</u> All right. And, in gathering these facts, you had witnesses -- you interviewed witnesses. Did you ever think about corroborating the witnesses' information that came to you?

Mr. <u>Clerget.</u> Did I ever think about it?

Mr. Panetta. Did you ever do it?

Mr. <u>Clerget.</u> Whistleblower 2 corroborates much of what Whistleblower 1 testified to.

Mr. <u>Panetta.</u> Okay. So, once again, so you just relied on the two whistleblowers and nobody else, correct?

Mr. <u>Clerget.</u> We have two whistleblowers that have come forward voluntarily, yes.

Mr. Panetta. And those were the only two you relied on, correct?

Mr. <u>Clerget.</u> Relied on for?

Mr. <u>Panetta.</u> For getting this evidence. Is that correct?

Mr. <u>Clerget.</u> We received the testimony from the whistleblowers, yes.

Mr. <u>Panetta.</u> Got it.

Now, there was someone that the whistleblower named by the name of Shawn Weede, correct, in Whistleblower 1's interview? He was an attorney with the U.S. Attorney's Office for the District of Delaware?

Mr. <u>Clerget.</u> I believe that is correct.

Mr. Panetta. And, then, what about Shannon Hanson, also a U.S. attorney?

Mr. <u>Clerget.</u> Shannon Hanson I don't recall, but it may be in the transcript.

Mr. <u>Panetta.</u> Okay. And what about Tom Sobocinski, an FBI agent? Do you remember that name?

Mr. <u>Clerget.</u> Yes.

Mr. Panetta. Got it. And what about Ryeshia Holley, another FBI agent?

Mr. <u>Clerget.</u> Don't recall that specific name, but it may be in the transcript.

Mr. <u>Panetta.</u> And then what about Darrell Waldon, an IRS special agent?

Mr. <u>Clerget.</u> Yes.

Mr. <u>Panetta.</u> Got it.

And I am quoting you from the transcript that we are discussing now, in reference to all of those names, in which you said, "And so if someone wanted to just check with those folks, they could tell what they heard Weiss say at the same meeting that you were at."

And so let me ask you this, Mr. Clerget. As majority counsel, did you follow up with any of those individuals to corroborate witness Whistleblower No. 1?

Mr. <u>Clerget.</u> The individuals that you asked me about previously?

Mr. Panetta. Correct.

Mr. <u>Clerget.</u> No, not as of yet.

Mr. Panetta. Okay.

Now, you also -- Whistleblower No. 2 talked about a guy named Matt Kutz, a

former IRS CI supervisor, correct?

Mr. <u>Clerget.</u> Yes.

Mr. Panetta. Got it.

And doesn't Whistleblower No. 2 state, "From what I was told by various people in

my agency, my IRS supervisor, Matt Kutz, created memos which he put in the

investigative files regarding the investigation potentially violating the subject's Sixth

Amendment rights." That is on page 21.

Do you remember that?

Mr. <u>Clerget.</u> Page 21?

Mr. Panetta. Do you remember that?

Mr. <u>Clerget.</u> It sounds familiar, yes.

Mr. Panetta. All right. Did the committee interview Mr. Kutz?

Mr. <u>Clerget.</u> Not yet.

Mr. <u>Panetta.</u> Did the committee make any attempt to contact Mr. Kutz?

Mr. <u>Clerget.</u> Not yet.

Mr. Panetta. Did the committee send Mr. Kutz an email?

Mr. <u>Clerget.</u> Not yet.

Mr. Panetta. Did it send him a letter?

Mr. <u>Clerget.</u> Not yet.

Mr. Panetta. Did you make a phone call to him?

Mr. <u>Clerget.</u> Not yet.

Mr. Panetta. Why not?

Mr. <u>Clerget.</u> It is not for me to say why, except to say that we received testimony

from two whistleblowers who came forward voluntarily.

Mr. Panetta. Got it.

And, once again, you are an attorney?

Mr. <u>Clerget.</u> Yes, sir.

Mr. Panetta. You went to law school?

Mr. <u>Clerget.</u> Yes, sir.

Mr. <u>Panetta.</u> You feel you know how to make a case?

Mr. <u>Clerget.</u> Yes, sir.

Mr. <u>Panetta.</u> Right. But, yet, you didn't gather all the facts to make this case.

Isn't that correct?

Mr. <u>Clerget.</u> I don't think that the Committee's work is done with regard to this matter.

Mr. <u>Panetta.</u> That is correct.

Thank you. I yield back.

Chairman <u>Smith.</u> Mr. Smith is recognized.

Mr. Smith of Nebraska. Thank you, Mr. Chairman.

Mr. Clerget, were any tax returns included in the release of any of this

information?

Mr. <u>Clerget.</u> There are no tax returns in the information presented to the committee today.

Mr. <u>Smith of Nebraska.</u> There have been several individuals whose names appear in the transcripts [that] have been mentioned.

Mr. <u>Clerget.</u> Yes.

Mr. <u>Smith of Nebraska.</u> Are you aware of any contact between the minority and any of those individuals that have been mentioned?

Mr. <u>Clerget.</u> I am not aware of any such contact.

Mr. Smith of Nebraska. Thank you.

I yield back.

Chairman Smith. Mr. Pascrell is recognized.

Mr. <u>Pascrell.</u> Thank you, Mr. Chairman.

Mr. Chairman, as you know, I am pretty familiar with 6103. And I hate to memorize, but I have memorized many parts of it since 2016. As the Ranking Member pointed out, another situation brought me to this interest. We are very familiar with how 6103 was put together and what it was based upon, the Teapot Dome scandal, which the nuns that taught me drilled into my head. So, we know the background here.

Whistleblower 1 alleges that he was passed over for a promotion. And his testimony names multiple individuals in the whistleblower's management chain.

Sir, did anyone from the Ways and Means Committee contact anyone in the management chain to corroborate the whistleblower's allegation?

Mr. <u>Clerget.</u> Specifically to retaliation, sir? Is that your question?

Mr. Pascrell. Yes.

Mr. <u>Clerget.</u> I think the only relevant person to that would be the IRS Commissioner, who the Chairman sent a letter to and spoke to, which I referenced in my remarks.

Mr. <u>Pascrell.</u> And, by the way, what year are we talking about?

Mr. <u>Clerget.</u> With regard to the retaliation?

Mr. <u>Pascrell.</u> Yeah.

Mr. <u>Clerget.</u> The allegations of retaliation, I believe, cover -- the specific points we have discussed, the removal from the team, would be in 2023. The whistleblowers make allegations about how complaints and issues they raised up their chain of command were handled dating back to, I believe, 2020.

Mr. <u>Pascrell.</u> So let me ask this. Did the Committee hear from anyone else in Whistleblower 1's management chain who agreed that his decision to come forward played a role in him being passed over for the promotion he alleges was owed to him?

Mr. <u>Clerget.</u> Other than the IRS Commissioner?

Mr. <u>Pascrell.</u> Yeah.

Mr. <u>Clerget.</u> No one else within the chain of command.

Mr. Pascrell. Yeah. Who was the IRS Commissioner at that particular time?

Mr. <u>Clerget.</u> I believe that would be an acting IRS Commissioner, Douglas

O'Donnell

Mr. Pascrell. Who was it?

Mr. Clerget. -- during the time in which --

Mr. <u>Pascrell.</u> What was his name?

Mr. <u>Clerget.</u> Douglas O'Donnell.

Mr. <u>Pascrell.</u> He was the Acting Commissioner at the time?

Mr. <u>Clerget.</u> In January, at the time of the selection issue that you referenced.

Mr. <u>Pascrell.</u> Okay.

You are telling us today that the corroboration will happen down the road?

Mr. <u>Clerget.</u> That is for the Committee to decide.

Mr. <u>Pascrell.</u> That is what?

Mr. Clerget. That would be for the Committee to decide.

Mr. Pascrell. This Committee?

Mr. <u>Clerget.</u> Yes.

Mr. <u>Pascrell.</u> I see. So how long do we have to wait to corroborate this allegation?

Mr. <u>Clerget.</u> Investigations, congressional investigations, take many shapes and forms. They can take --

Mr. <u>Pascrell.</u> Yeah, we realize that.

Mr. <u>Clerget.</u> They can process in stages. So there are any number of ways the Committee could proceed.

Mr. <u>Pascrell.</u> So this may be, quote/unquote, "corroborated" next year?

Mr. <u>Clerget.</u> Can you repeat the question?

Mr. <u>Pascrell.</u> What we are talking about here this morning. Whistleblower 1, his story could be corroborated next year?

Mr. <u>Clerget.</u> Certainly could be at any time. It was corroborated by Whistleblower 2, in many respects.

Mr. <u>Pascrell.</u> But no one internally within the organization has corroborated it

except Whistleblower No. 2. And have you corroborated his story?

Mr. <u>Clerget.</u> To date, we have received the testimony of these two

whistleblowers. The transcripts of their interviews are before you.

Mr. <u>Pascrell.</u> Mr. Chairman, I will come back to this. Thank you. Chairman <u>Smith.</u> Thank you.

Mr. LaHood is recognized.

Mr. LaHood. Thank you, Mr. Chairman.

Mr. Clerget, I wanted to get a little bit more clarification on the scheduling and the conducting of the voluntary depositions with the two whistleblowers.

If I understand your testimony here today, that was done in full cooperation with the minority, their attorneys, and staff. Is that fair?

Mr. <u>Clerget.</u> That is fair.

Mr. <u>LaHood.</u> Were you accommodating to them in terms of the scheduling of those depositions?

Mr. <u>Clerget.</u> Yes. In fact, we scheduled the -- I believe it was the Whistleblower 2 interview to make sure that it fit with minority counsel's schedule.

Mr. <u>LaHood.</u> And how many lawyers on the other side were involved, or staff, on the conducting of the depositions?

Mr. <u>Clerget.</u> There were three minority counsel, and those were the individuals that were requested by Ranking Member Neal to be designated.

Mr. <u>LaHood.</u> And when you were scheduling these depositions, was there ever any objections, either verbal or written, sent to you that objected to the conducting of these depositions?

Mr. <u>Clerget.</u> No.

Mr. <u>LaHood.</u> Were there ever any legal cases cited that you should not move forward with the depositions?

Mr. <u>Clerget.</u> No.

Mr. <u>LaHood.</u> We heard about a case today, Kilbourn v. Thompson, that was cited. That is the first time we have heard that. That was never mentioned by any counsel, the three, prior to today. Is that correct?

Mr. <u>Clerget.</u> I don't believe so.

Mr. <u>LaHood.</u> Was there ever any legal precedent presented that said this was somehow outside of the bounds of the authority of the Ways and Means Committee?

Mr. <u>Clerget.</u> No.

Mr. <u>LaHood.</u> Was there ever anything cited or case law that indicated that 6103 was being violated here?

Mr. <u>Clerget.</u> No.

Mr. <u>LaHood.</u> Was there any case law that said that this was somehow improper cited by the three lawyers on the other side through this process?

Mr. <u>Clerget.</u> No, not that I recall.

Mr. <u>LaHood.</u> And, obviously, we have something in the legal system called an injunction that can be filed in court basically saying that this proceeding is illegal. Are you aware of any injunction filed on the other side by any of these lawyers?

Mr. <u>Clerget.</u> I am not.

Mr. <u>LaHood.</u> Thank you.

I yield back.

Chairman <u>Smith.</u> Mr. Arrington is recognized.

Mr. <u>Arrington.</u> Thank you, Mr. Chairman.

Just some simple questions for clarification.

How long were the whistleblowers – how long have they worked at the IRS? Are

these new employees?

Mr. <u>Clerget.</u> Both employees have been with the agency for a number of years.

Mr. <u>Arrington.</u> More than 5?

Mr. <u>Clerget.</u> I believe both more than 5, yes.

Mr. <u>Arrington.</u> More than 10?

Mr. <u>Clerget.</u> I believe both more than 10.

Mr. <u>Arrington.</u> Have either of the whistleblowers filed a whistleblower complaint before this one?

Mr. <u>Clerget.</u> I think the terminology – rather than "complaint," a "protected disclosure." I don't believe so. I am not aware of any complaints or protected disclosures outside of this matter that they have previously filed.

Mr. <u>Arrington.</u> Okay.

The agents felt like that they could not thoroughly and completely and responsibly investigate this case – I am summarizing. They alleged that their ordinary investigative techniques were curtailed, that there was preferential treatment to the taxpayer, Mr. Biden.

Are those the allegations, essentially, that have been levied?

Mr. <u>Clerget.</u> That is consistent with my understanding of the testimony of these whistleblowers.

Mr. <u>Arrington.</u> My understanding is, there were numerous interviews that these agents wanted to conduct, and they were precluded from doing so. Is that accurate?

Mr. <u>Clerget.</u> The transcripts speak for themselves. That is consistent with my understanding of --

Mr. <u>Arrington.</u> They also alleged that they would conduct, sort of, these surprise interviews where they would pay a visit to somebody's home, in one case it was going to be Mr. Biden himself, and that the DOJ tipped off Mr. Biden before they arrived at his home.

That is one of the concerns that were articulated in the allegations. Is that correct?

Mr. <u>Clerget.</u> That is correct.

Mr. <u>Arrington.</u> Okay.

So, when it came to light -- or maybe I should ask you, when were these special agents removed from the case?

Mr. <u>Clerget.</u> The committee received a letter stating that it occurred on May 15, 2023.

Mr. <u>Arrington.</u> So, they made a complaint that they couldn't investigate people that were part of the ordinary techniques that they deploy for anybody else in the line of duty over 10 years of experience as a special agent. They complain, and they are removed from the case.

What were the charges that they recommended be applied to Mr. Biden as a result of his tax infractions?

Mr. <u>Clerget.</u> I will say that the transcripts and the exhibits speak for themselves, but the Chairman referenced the specific tax charges that were referenced --

Mr. Arrington. Can you --

Mr. <u>Clerget.</u> -- in his opening statement.

Mr. <u>Arrington.</u> Can you remind me what they are? Are they multiple felony counts?

Mr. <u>Clerget.</u> Three different tax charges over a period from 2014 to 2019.

Mr. <u>Arrington.</u> So, then, they can't investigate this properly, in their minds.

They make their concerns known. They are pulled from the case. People are tipped off before they ever investigate; that seems unusual. And then their recommendation is that there are multiple felony charges.

And then it comes to light, by the way, after 5 years of investigation, when this proceeding basically becomes public over the last several weeks, a plea deal is struck for misdemeanor charges.

Now, there may be nothing to that, but it seems unusual, considering all the other

facts and allegations that -- we just assume they are allegations at this point, but I think they would suggest that more due diligence be conducted.

If there is a deal struck, when is that deal finalized? When the judge accepts that plea deal? Is that correct? I am not a lawyer.

Mr. <u>Clerget.</u> Generally speaking, yes, that would be --

Mr. <u>Arrington.</u> And when will that happen? Within days? Weeks?

Mr. <u>Clerget.</u> The court will schedule a plea hearing.

Mr. <u>Arrington.</u> When that plea deal is struck and a judge approves it, if there was relevant information, critical information, that could have been discerned from ordinary -- to use the language of these gentlemen, ordinary investigative techniques, without being obstructed by the U.S. attorney for whatever reason -- they claim preferential treatment -- can that information be used to relitigate this on charges that would be more commensurate with the crimes committed? Or is this a case-closed situation once the plea is accepted by the judge?

Mr. <u>Clerget.</u> My understanding is that the case would be closed after the plea is accepted by the judge.

Mr. Arrington. I think it would be irresponsible --

Chairman <u>Smith.</u> Mr. Arrington, your time has expired.

Mr. <u>Arrington.</u> Okay. I would like some more time, if somebody could yield it to me.

Chairman <u>Smith.</u> Okay. We will get that in the next time.

Mr. Blumenauer?

Mr. Arrington. Is Mr. Blumenauer going to yield me more time?

Mr. <u>Blumenauer.</u> That is a tempting possibility. Hold that thought for our Committee meeting later today.

Mr. Clerget, you heard the Chairman talk about being able to give information to other committees who are involved with this -- related activities. What is the specific process under 6103 that other committees get access to our work product?

Mr. <u>Clerget.</u> The Ways and Means Committee, as it has done in prior instances, has the ability today to report these materials to the full House of Representatives by a vote of the committee.

Mr. <u>Blumenauer.</u> Yes. Short of that -- I am referring to the Committee Chair's notion that we can provide information to other committees to aid their efforts.

Mr. Clerget. I --

Mr. <u>Blumenauer.</u> What is the process, what is the formal process, that the Ways and Means Committee follows to be able to give other committees access to our 6103 power?

Mr. <u>Clerget.</u> I don't want to speak for the Chairman, but I believe he was referring to that process we are undertaking --

Mr. <u>Blumenauer.</u> I am --

Mr. <u>Clerget.</u> -- here today.

Mr. <u>Blumenauer.</u> -- asking, what is the formal process that would enable other committees to use our 6103 power?

Mr. <u>Clerget.</u> To use our 6103 power?

Mr. <u>Blumenauer.</u> Authority to be able to reveal information under 6103. What is the formal process?

Mr. <u>Clerget.</u> Are you referring to the Chairman's ability to designate agents? Is that --

Mr. <u>Blumenauer.</u> No. I am referring to, in statute, what is the authority by which we can give other committees information under our 6103 authority?

Mr. <u>Clerget.</u> I believe we are undertaking that process here in executive session --

Mr. Blumenauer. No. There is a formal process in statute. Do --

Mr. <u>Clerget.</u> Oh.

Mr. <u>Blumenauer.</u> -- you know what that is?

Mr. <u>Clerget.</u> You are referring -- I understand the question.

Mr. <u>Blumenauer.</u> How do other committees get 6103 information?

My time is running out. Can you help me here?

Mr. <u>Clerget.</u> There is a statutory provision related to other committees at section 6103(4)(a) -- or (4)(b).

Mr. Blumenauer. What is that process?

I will cut to the chase, Mr. Chairman.

There is an authority pursuant to action on a written request by the chairman of a committee in the House or the Senate to specifically authorize to inspect return or get return information. It requires a concurrent resolution that is passed.

Subsection 3 specifies what process we have to go through. It is not just randomly leaking this. It has to go through the statutory process, has to be legislated. And this is the protection to make sure that we are not having our 6103 authority abused.

I found a little unsettling the implication from the Chairman that somehow we are going to be helping other committees with our 6103 authority. And that is what is going to happen if we unduly leak this. We are circumventing the statutory protections.

And I would suggest that perhaps counsel review that and work with the committee chair so that we respect the process of 6103.

There was great concern by some people when we were dealing with the former President's tax returns. Our Chairman followed the letter of the law scrupulously. But, at the end of the day, we found that there were serious problems in the IRS that led to potential changes legislatively in keeping with the intent and the letter of the law.

I think we are moving into reckless territory here, in terms of using these unsubstantiated efforts, leaking information, when there is a specific statutory process that protects the integrity of this committee and the rights of the taxpayers.

I yield -- well, I guess it is gone.

Chairman <u>Smith.</u> It has expired.

Mr. <u>Blumenauer.</u> I yield it to Mr. Arrington.

Chairman <u>Smith.</u> Mr. Hern, you are recognized.

Mr. <u>Hern.</u> Thank you, Mr. Chairman. Thanks for having this today.

For the record, I am not an attorney, Jim, not an attorney. But I have spent a lot of money on attorneys in my lifetime and, you know, want to make sure that we have really good ones. And, you know, one thing I have been really admiring about this place in my 4 years here is how really smart staff is. And, certainly, the attorneys on both sides do a lot of work understanding what is going on.

Mr. Clerget, just out of curiosity, you know, it was stated a minute ago that there were three attorneys representing the minority. Is that correct?

Mr. <u>Clerget.</u> At the transcribed interviews, yes.

Mr. <u>Hern.</u> How many on the majority side?

Mr. <u>Clerget.</u> Four.

Mr. <u>Hern.</u> Okay. Did it ever -- I mean, it has been reported by my colleagues that there were some 50 witnesses that could have potentially been called to corroborate what Whistleblower 1 and Whistleblower 2 -- a bunch of names have been read off. I am amazed that you can remember a lot of those.

Were you ever asked -- did they ever ask to bring any of them in?

Mr. <u>Clerget.</u> No.

Mr. <u>Hern.</u> So they must have found that Whistleblower 2 and 1 were, in their 7 hours each of testimony, were pretty reliable, pretty credible.

Mr. <u>Clerget.</u> I can't speak to their opinion of --

Mr. <u>Hern.</u> But, I mean, that would sort of imply that, if they didn't ask for any further backup. My colleagues haven't said their attorneys requested it and we denied it. That has not been reported.

Mr. Clerget. Not --

Mr. <u>Hern.</u> I haven't heard that today.

Mr. <u>Clerget.</u> Not that I am aware of.

Mr. <u>Hern.</u> Well, why? Why? What is the reason for that, would you guess?

I mean, if you are in a scenario like this, and -- I mean, they are criticizing you and your team because you didn't ask. I haven't heard them say, "Well, our team asked, and you wouldn't comply."

Was that question ever asked of you? I don't want you to state it different ways, but --

Mr. <u>Clerget.</u> No.

Mr. <u>Hern.</u> Never?

Mr. <u>Clerget.</u> No.

Mr. <u>Hern.</u> It sounds kind of bad, but, I mean, it sounds like they have sour grapes in the representation they have. I mean, I don't know. I think that they have great staff, but I don't even know them all. But we heard them last year, and -- this is a different -- and we are not going to release a bunch of tax returns, right?

Mr. <u>Clerget.</u> There are no tax returns in the materials before the Committee today.

Mr. <u>Hern.</u> Unlike last time. And we heard through testimony time and time again, a lot of people were very uncomfortable, and Tom Barthold said that he couldn't find any wrongdoing. There was legitimate losses in there that met the Tax Code.

So those tax returns last year were released to embarrass a President. And, as my colleague just said, we learned that we needed to do some different disclosure rules for the President. But it wasn't about the tax returns. It was just the disclosure rules needed to be changed and enforced.

I am not asking you to quote on that. So I just want to put this in perspective. This wasn't about embarrassment. This was about very experienced IRS agents who saw wrongdoing, who ran it through the chain of command, who did everything they thought they should do, like they would do with every other case, and they were totally ignored by some internal cabal, if you want to call it that, inside the IRS, Department of Justice, and they ultimately got very frustrated and wanted to see what resolve was. And I know this was asked by one of my colleagues, about what is that process. And that is where this process got to.

And, again, I don't want to -- I just wanted to clarify that, just so I make sure I don't leave any, you know, lawyer stuff out there. Not any one of the witnesses, of those so-called 50 other potential witnesses, not any one of them were ever called -- not 50 in total, but not any one of them were asked to be called in or brought in to corroborate?

Mr. <u>Clerget.</u> Not that I recall.
Mr. <u>Hern.</u> Okay.
I yield back.
Chairman <u>Smith.</u> Mr. Ferguson is recognized.
Mr. Ferguson. Thank you, Mr. Chairman.

And, Mr. Hern, thank you for pointing out that we have a wonderful prosecutor down on the lower dais from the great State of California. And I, like you, am just an old country dentist and not a lawyer, so I have a couple of questions to ask so we can straighten this out.

First of all, in this process with our IRS agents, the criminal investigation agent, in the audit tapes, their primary job is to go through, gather information, to make sure that individual Americans pay their taxes, correct?

Mr. <u>Clerget.</u> I think that is a fair statement, yes.

Mr. <u>Ferguson.</u> Okay. And that is an independent process. Under the IRS, those are their rules.

And their mission every day is to go out and make sure that the Tax Code is enforced. They are looking for problems, they are looking for folks that aren't paying their taxes, maybe underpaying taxes. If they get a whiff of something that doesn't smell right, then they have to go investigate that, right?

Mr. <u>Clerget.</u> Yes.

Mr. Ferguson. And that is an independent process, right?

Mr. <u>Clerget.</u> That is my understanding, yes.

Mr. <u>Ferguson.</u> And they should be allowed to do their job. Because let me tell you something. If I miss a quarterly payment, I am telling you, they are coming at me with guns a blazing. It may be \$400, but, I mean, they are coming my way.

So I get what they do. And that is their job, right?

Mr. <u>Clerget.</u> Yes.

Mr. <u>Ferguson.</u> Now, in the statute -- and, again, I am asking because I don't know here -- where does it say that other agencies can tell this agency how to operate?

Mr. <u>Clerget.</u> I am not aware of a specific provision.

Mr. <u>Ferguson.</u> Okay. So, in theory, the IRS agents have to act independently, right? They have a job to do. They are in the IRS. They are not in ATF, they are not in the Department of Justice, they are not in the FBI. They are in the IRS, right?

Mr. <u>Clerget.</u> These are IRS employees.

Mr. <u>Ferguson.</u> These are IRS employees governed by IRS standards and IRS procedures.

Mr. <u>Clerget.</u> Yes.

Mr. Ferguson. Okay.

So Whistleblower 1, in his affidavit that is attached, it made reference that, during a criminal investigation, it is pivotal that all investigative leads are shared with the investigator so the appropriate investigative steps can be executed, correct?

Mr. <u>Clerget.</u> Which paragraph is that?

Mr. Ferguson. That is paragraph 7, on the back. All right?

Mr. <u>Clerget.</u> Yes.

Mr. <u>Ferguson.</u> So we now have a situation where IRS agents were blocked or certainly hindered in their efforts to retain more information in their job to make sure that an individual paid his taxes. I mean, things like tipping off defense counsel; telling investigators not to ask certain questions, okay; refusing to allow investigators to obtain search warrants, all right -- I mean, this is pretty serious stuff.

So now we have the Department of Justice interfering with an IRS investigation. Is that kind of what has happened here? Or has there been, you know -- or have you got -- I mean, who is telling these folks --

Mr. <u>Clerget.</u> So I think, as investigations like this develop in a criminal nature, they often develop into a partnership between IRS agents, for example, and Department of Justice prosecutors and officials. Mr. <u>Ferguson.</u> All right. But, in that, the IRS still has got a duty that it has to do, to go get tax dollars that are owed to the Treasury.

Mr. <u>Clerget.</u> Yes.

Mr. <u>Ferguson.</u> All right. So, from my standpoint, I am looking at this, it looks like that we need some clarification from a legislative standpoint to determine when the Department of Justice can actually overstep into the IRS, -- because we want the IRS to do its job, right?

Mr. <u>Clerget.</u> Yes. I think that is something the Committee could consider.

Mr. <u>Ferguson.</u> Well, you know, I think that is what we ought to do, and I think that is what we are doing here today. We have a legitimate legislative purpose. We are not releasing tax returns.

Last year, when my colleagues on the other side of the aisle were in the majority, they said that it was absolutely necessary to release tax returns of President Trump in order to make a legislative change. They agreed with that; we fought them. We think we are on the right track here; they are fighting us.

We are going to go through this process but let me say this: I hope that this committee, going forward, will be very thoughtful, because I don't think this committee every year of every term ought to be going -- making this what this feels like it is going to become, which is opening the Pandora's box, which we started last year.

Bottom line, we have a legislative purpose. We need to follow it. And we need to make sure that these agents aren't interfering with one another's work when appropriate.

With that, I yield back.

Chairman <u>Smith.</u> Mr. Schneider is recognized.

Mr. Schneider. Thank you.

And like my previous two colleagues who spoke, I am not a lawyer. In fact, I am an engineer. And my friends would often claim that English is a second language, but I am going to try to play with -- or ask about the meaning of some words generally.

And let me first say to my colleague, Mr. Ferguson, I agree with you about the gravity of what we do and, in particular, in the case of 6103.

And, Mr. Clerget, I guess the first question: You said that documents have been released through this process before. We know about December. You mentioned other times. December's vote to release documents, that was not the first time that this committee had done so. Is that correct?

Mr. <u>Clerget.</u> That is correct.

Mr. <u>Schneider.</u> Okay. It had happened before.

Also, there were a lot of questions to you that there are no tax returns in the documents we are talking about, correct?

Mr. <u>Clerget.</u> Tax returns, that is correct.

Mr. Schneider. Is there tax information in these documents?

Mr. <u>Clerget.</u> Yes, sir.

Mr. <u>Schneider.</u> Again, engineer, just playing on words. Private information that would be included on tax returns, is that included in this information?

Mr. <u>Clerget.</u> Yes, there is tax information, some of which would be included on tax returns.

Mr. <u>Schneider.</u> Okay. So, it is private information that is being potentially released to the public through the process?

Mr. <u>Clerget.</u> Should the Committee choose to do so.

Mr. <u>Schneider.</u> Okay.

The other questions I have –my next question: This idea of voluntary. You say

both individuals voluntarily testified. What do you mean by that, "voluntarily"?

Mr. <u>Clerget.</u> They were not under subpoena or any sort of legal mandatory testimony. They sat voluntarily for an interview.

Mr. <u>Schneider.</u> Okay.

And Whistleblower 2, you said he didn't file a complaint. Did he submit a letter or an email or in any way reach out to the committee asking to testify?

Mr. <u>Clerget.</u> The Committee received a letter from Whistleblower 2's counsel on May 24th.

Mr. <u>Schneider.</u> Was that solicited by the committee?

Mr. <u>Clerget.</u> The Committee received information that Whistleblower 2 was represented by counsel and had relevant information that he may want to share.

Mr. <u>Schneider.</u> Well, who began the interaction between Whistleblower 2's counsel? Did the Committee reach out to counsel, or did counsel reach out to the Committee?

Mr. <u>Clerget.</u> After receiving the information I described, the committee then reached out to counsel.

Mr. <u>Schneider.</u> So, neither the whistleblower 2 nor Whistleblower 2's counsel initiated the engagement with the committee.

Mr. <u>Clerget.</u> Not directly.

Mr. <u>Schneider.</u> Did they do so indirectly?

Mr. <u>Clerget.</u> I don't know. We received information that this person was represented by counsel and may have information to share.

Mr. <u>Schneider.</u> Okay. I guess -- and, again, words, "voluntary" versus "volunteer." Are you implying or maybe stating directly that Whistleblower 2 volunteered to testify? Mr. <u>Clerget.</u> After the Committee reached out, Whistleblower 2's counsel stated that he would be willing to provide information to the committee, and then he did so voluntarily.

Mr. <u>Schneider.</u> Okay. He agreed to testify at the request of the committee. Is that a fair statement?

Mr. <u>Clerget.</u> Yes.

Mr. <u>Schneider.</u> Okay. It was the request of the committee to testify. It was not what you are calling Whistleblower 2, this second individual, volunteering to testify.

Mr. Clerget. He testified voluntarily after the committee --

Mr. <u>Schneider.</u> Testified voluntarily, but did not volunteer to testify.

Mr. <u>Clerget.</u> I think -- did not volunteer to testify prior to the committee reaching out to him.

Mr. <u>Schneider.</u> Okay.

And my last question. You have said -- not to put words in your mouth; I think you made this direct quote -- "I don't feel the Committee work is done." Is that what you said?

Mr. <u>Clerget.</u> I think -- I am not sure if that is exactly what I said, but I think it -- the Committee -- it is up to the Committee whether it takes additional investigative steps in this or in any other matter.

Mr. <u>Schneider.</u> Okay. Do you feel the Committee work is done?

Mr. <u>Clerget.</u> It is not for me to say what I feel.

Mr. Schneider. Well, you did say that earlier. And I think that is --

Mr. <u>Clerget.</u> I may have misspoken.

Mr. <u>Schneider.</u> Okay. I think that is actually a good point. I agree with what you said earlier. And my concern is, we are putting the cart in front of the horse, that

we are, as my colleague Mr. Blumenauer said, we are being reckless with an issue that is extremely important.

As Mr. Clerget noted, there is tax information. To say that the tax returns are not here, I think, is disingenuous. And, I think it is critically important that we do all of our work, that we corroborate the allegations that are being made here, before we make any decision to release private information -- private tax information -- protected under 6103, for good reason, to the public.

I yield back.

Chairman <u>Smith.</u> Mr. Murphy is recognized.

Mr. <u>Murphy.</u> Thank you, Mr. Chairman, and thank you for holding this meeting today.

Just a few technical questions, because I think we are still supposed to be asking technical questions.

Who was in the room asking questions during the interview of Whistleblower 2? Who were the people in the room?

Mr. <u>Clerget.</u> There were members of majority staff, minority staff, and Chairman Smith participated in a portion of the interview of Whistleblower 2.

Mr. Murphy. Okay. Okay.

And I also need some clarification. Did the attorney of the second whistleblower contact the Committee and ask the Committee to ask them to come in?

Mr. <u>Clerget.</u> The communication did not come from Whistleblower 2's counsel.Mr. <u>Murphy.</u> Okay.

Maybe I can phrase that a little bit differently. Did the Whistleblower No. 2, through counsel, contact the Committee and ask that they be asked to testify?

Mr. <u>Clerget.</u> It appears that they wanted to be asked.

Mr. <u>Murphy.</u> Okay. So they wanted to be asked. They just -- and so we asked them. That is my understanding.

Mr. <u>Clerget.</u> Correct.

Mr. <u>Murphy.</u> Okay? Because that is -- there is a little difference in that.

I am not an attorney. I watched a bunch of "Matlock" when I was young. There was not much to do in North Carolina during those days, so it was good to see Andy Griffith do his thing.

Can you explain to me the course of events that happened that this was all

occurred? In other words -- yeah, tell me how -- tell me how we got to where we were.

Mr. <u>Clerget.</u> So the Committee Chairman, Ranking Member, and --

Mr. Murphy. I --

Mr. <u>Clerget.</u> -- chairs and ranking members of other committees -- sorry. Go ahead.

Mr. <u>Murphy.</u> No, I am sorry. How did the fact that Hunter Biden's tax returns, where he didn't pay taxes for years and years and years, how did that come about? What was being looked for?

Mr. <u>Clerget.</u> You mean with regard to the --

Mr. <u>Murphy.</u> So, in other words, they weren't looking specifically at Hunter's returns. They were looking for something else. And then something glaring came up.

Mr. <u>Clerget.</u> Whistleblower 2 testified that the investigation into Hunter Biden spun off from another IRS investigation.

Mr. <u>Murphy.</u> Okay. Okay.

Another thing when I was reading the transcripts: Am I correct in reading that the FBI verified the authenticity of the Hunter Biden laptop in November of 2019 because of Hunter Biden's Apple ID? Mr. <u>Clerget.</u> I believe that is what the whistleblower testified to.

Mr. <u>Murphy.</u> Okay. And I said, wow. You know, when they fought that and said they weren't even sure, I think it was, like, 6 months ago, it was his. But the FBI verified that. And so it makes you question a little bit.

Can you -- I am not an attorney -- Can you explain to me what the phrase "statute of limitations" means? Not "statue," as Cosmo Kramer would say, but "statute of limitations."

Mr. <u>Clerget.</u> Statute of limitations is essentially a time limit, a time period in which a charge can be brought, the idea being that you typically can't bring a charge against someone for something 50 years ago, right?

And Congress has put into law certain limitations. You know, if you identify a crime within a certain time period, you can bring charges and pursue it, but you can't go way back. And Congress and State legislatures have created those laws, and it puts a limitation on the time in which a charge can be brought.

Mr. <u>Murphy.</u> So it is my understanding -- again, I am not a legal expert -- that if an investigation is not started in a timely manner, the delay, delay, delay, delay could basically run out somebody's statute of limitations.

Mr. <u>Clerget.</u> The statute of limitations can expire.

Mr. <u>Murphy.</u> Yeah. So -- okay.

Am I also correct -- and I just want to make sure this is correct for the record -- that Whistleblower 2 recommended, for 5 years of tax evasion, multiple felony counts for tax evasion, for attempting to evade or defeat tax, willful failure to file tax returns, supply information or pay taxes, and fraud or false statements?

Mr. <u>Clerget.</u> My understanding -- that is consistent with what the whistleblowers testified that the --

Mr. <u>Murphy.</u> All right.

Mr. <u>Clerget.</u> -- IRS recommended. Yes.

Mr. <u>Murphy.</u> So that was in 2022, again, within the statute of limitations, so it would be pushed on further.

One last question. Isn't the oversight of the IRS under the purview of Ways and Means?

Mr. <u>Clerget.</u> Yes.

Mr. <u>Murphy.</u> Okay. So we have seen problems with the IRS, so it is absolutely

within the oversight of this committee -- purview of this committee to overlook the IRS?

Mr. <u>Clerget.</u> Yes.

Mr. <u>Murphy.</u> All right.

Thank you, Mr. Chairman. I will yield back.

Chairman Smith. Ms. Moore is recognized.

Ms. <u>Moore of Wisconsin.</u> Thank you so much, Mr. Chairman.

And just let me say happy birthday to lots of people on this committee who should be enjoying their birthday instead of being here today -- you, Mr. Chairman; Don Beyer; Representative Michelle Steel; and Blake -- my cousin, Blake Moore.

Mr. <u>Moore of Utah.</u> Thank you, cuz.

Ms. <u>Moore of Wisconsin.</u> Thank you, Mr. Clerget. Am I saying your name correctly?

Mr. <u>Clerget.</u> It is a hard G, "Cler-get."

Ms. <u>Moore of Wisconsin.</u> Clerget. Thank you so much for being here. I do have a lot of questions.

I am very confused about the timeline. Whistleblower No. 2, on page 29, talked about the slow-walking of the case. And I guess I just really want to put a timeline

together, for my own information, about when it was perceived to be that the slow-walking began and ended and who was in charge.

You know, the dates that I see start with January 2020 when Whistleblower No. 1 was assigned to the case. Is that true?

Mr. Clerget. That is consistent with --

Ms. Moore of Wisconsin. Okay.

Mr. <u>Clerget.</u> -- his testimony, yes.

Ms. <u>Moore of Wisconsin.</u> So, he was assigned. And so, who was the President at that time?

Mr. <u>Clerget.</u> On January 1, 2020?

Ms. Moore of Wisconsin. Yeah.

Mr. <u>Clerget.</u> That would be President Donald Trump.

Ms. Moore of Wisconsin. Yeah. President Donald Trump.

And so, who was the U.S. attorney at that time?

Mr. <u>Clerget.</u> The U.S. attorney in Delaware?

Ms. <u>Moore of Wisconsin.</u> In Delaware and the U.S. attorney of the United States.

Mr. <u>Clerget.</u> The Attorney General of the United States -- I believe there was an

Acting Attorney General on January 1, 2020.

Ms. Moore of Wisconsin. Okay. Good. And who was the U.S. attorney in

Delaware?

Mr. <u>Clerget.</u> I believe that was David Weiss at that time.

Ms. Moore of Wisconsin. David Weiss. And what is his political affiliation?

Mr. <u>Clerget.</u> I am not sure of his political affiliation.

Ms. Moore of Wisconsin. Okay. But who appointed him?

Mr. <u>Clerget.</u> President Trump.

Ms. Moore of Wisconsin. President Trump appointed him. Okay. I see.

All right. So, Mr. Clerget, I am moving now to, like, April of 2020, where Whistleblower No. 1 says that, you know, the case had sort of become ripe, but there were concerns about it. His opinion, I guess, was that April 2020, that that was just too close to an election, that he was told that there were concerns regarding the proximity to the 2020 election with regard to moving forward.

Am I understanding it right, his testimony?

Mr. <u>Clerget.</u> The Department of Justice has a policy that for a certain period of time before an election they don't take actions that might influence an election. I believe that time period is -- it was testified that it is 60 to 90 days before an election, so --

Ms. <u>Moore of Wisconsin.</u> Okay. So Whistleblower No. 1's concern was that the case was kind of ripe in 2020 and that they should have pursued it at that point. Am I reading that right -- am I understanding? I am trying to get this straight.

Mr. <u>Clerget.</u> That sounds consistent with my understanding. I am not sure what page you are looking at, but that is generally consistent with my understanding.

Ms. <u>Moore of Wisconsin.</u> Okay. I was looking at page 13.

Mr. <u>Clerget.</u> On Whistleblower No. 1?

Ms. <u>Moore of Wisconsin.</u> On Whistleblower No. 1. Just trying to figure out, just for my own understanding. I didn't get a chance to read all this material, obviously, in the SCIF, so I just want to make sure I understand.

Okay. And whose decision was it -- so I am looking now at -- . There was a decision being made. There was a decision on October 20, 2020, to properly pursue this right after the election, but on page 24, Whistleblower No. 2 says, "Tax does not approve."

Who was Tax? Was that a career employee or was it an appointee that did not approve the case to go forward on October 20th, which obviously was right after the election. "Tax did not approve." Who were they talking about?

Mr. <u>Clerget.</u> My understanding is that references to "Tax" are references to the Department of Justice Tax Division.

Ms. <u>Moore of Wisconsin.</u> Yeah. And so, Bill Barr was in office until December 23, 2020. And Commissioner Rettig was in office from October 1, 2018 to 2022.

Mr. <u>Clerget.</u> I apologize, I was thinking of January 1, 2021, there was an Acting. It was Bill Barr on January 1, 2020.

Ms. <u>Moore of Wisconsin.</u> Okay. So "Tax," who didn't approve it, that was also an appointee of Donald Trump's. Am I right about that?

Mr. <u>Clerget.</u> I am sorry. Who?

Ms. Moore of Wisconsin. Commissioner Rettig?

Mr. <u>Clerget.</u> Rettig? Yes.

Ms. Moore of Wisconsin. Okay.

There was a meeting after the election, on December 8, 2020. This was after the election. And no movement was being made then either, right?

Mr. <u>Clerget.</u> My understanding of the testimony is that December 8th of 2020 is what the whistleblowers referred to as their day of action.

Ms. <u>Moore of Wisconsin.</u> What happened on their day of action? Why didn't it happen?

Mr. <u>Clerget.</u> I don't want to characterize the testimony, but my understanding of the testimony is that that is when they planned to conduct outward investigative activities.

Ms. Moore of Wisconsin. Okay. But they didn't do it. Okay. So --

Chairman <u>Smith.</u> Ms. Moore, your time has expired.

Ms. Moore of Wisconsin. Oh, no, I don't think so, has it?

Chairman <u>Smith.</u> It is 51 seconds over.

Ms. <u>Moore of Wisconsin.</u> Can I reclaim the time that I spent wishing you a happy birthday, sir?

Chairman <u>Smith.</u> That was about 30 seconds. That is why I gave you 51.

Ms. Moore of Wisconsin. All right. I yield back.

Chairman <u>Smith.</u> You are so kind, Ms. Moore.

To the birthday boy, we wish you a happy birthday. And, Mr. Moore, you are next.

Mr. Moore of Utah. Thank you.

And thank you to the gentlewoman from Wisconsin for the birthday wishes. It is a fun day to share a birthday. You can look on Politico to see who else I share it with.

Mr. Clerget, I am confused at a few things. This seemed pretty straightforward, cut and dry. This is information that should be released, should be shared, and we are going through that process doing that today.

Coming in today, though, as I listened to the Ranking Member's opening testimony and then subsequent statements and questions from the minority, it appears that, as the Ranking Member said, we should not be impeding -- I don't have the exact wording -- of an ongoing investigation, you should not be getting involved in this.

And then every other statement has been: Why didn't you do more investigating? Why didn't you ask more questions? Why didn't you interview more people? Why didn't you take a more thorough view and do more corroboration?

Is that accurate from what has transpired on today's hearing so far, from your

perspective?

Mr. <u>Clerget.</u> That is consistent with what I heard from members of the committee.

Mr. <u>Moore of Utah.</u> Okay.

So our Democratic colleagues seem very excited about adding on a whole host of interviews on this matter before we vote whether or not to make this public, correct? That is what we are doing, is we are voting on whether or not to make this public.

Mr. <u>Clerget.</u> To report it to the full House of Representatives.

Mr. <u>Moore of Utah.</u> Report it to the House of Representatives and going public from that.

Mr. <u>Clerget.</u> Yes.

Mr. <u>Moore of Utah.</u> How many interviews did the Democrats hold before releasing -- and I wasn't on committee at that time -- How many interviews did the Democrats hold before releasing President Trump's tax returns?

Mr. <u>Clerget.</u> I am not aware of any transcribed interviews.

Mr. Moore of Utah. Were there any bipartisan interviews done at that time?

Mr. <u>Clerget.</u> I am not aware of any bipartisan transcribed interviews.

Mr. <u>Moore of Utah.</u> Were there any interviews of IRS personnel done at that time?

Mr. <u>Clerget.</u> Not that I am aware of.

Mr. Moore of Utah. You are not aware of any interviews at all?

Mr. <u>Clerget.</u> No.

Mr. <u>Moore of Utah.</u> Were you on Committee at that time? Were you involved?Mr. <u>Clerget.</u> I joined the committee in May of 2019.

Mr. Moore of Utah. So yes?

Mr. <u>Clerget.</u> So yes.

Mr. <u>Moore of Utah.</u> How long did Republican and Democrat staff spend in bipartisan interviews with these whistleblowers?

Mr. <u>Clerget.</u> A total of approximately 14 hours across the two interviews.

Mr. <u>Moore of Utah.</u> So your understanding, as the technical witness today, is that you don't recall any interviews done with respect to this process just a short time ago -- and, again, I wasn't on committee at that time -- and significantly more hours done in this case. Is that correct?

Mr. <u>Clerget.</u> Yeah. And, just to be clear, I recall a briefing from the IRS, in the context of what was done last year, but no recollection of any transcribed interviews, depositions, and so on.

Mr. <u>Moore of Utah.</u> After those 14 hours that minority counsel had been involved in those interviews, how many additional interviews have they requested to do on this matter?

Mr. <u>Clerget.</u> I am not aware of any additional requests for interviews on this matter.

Mr. <u>Moore of Utah.</u> What was part of the majority at that time, in the 117th Congress, what was part of their major legislative initiative when they had budget reconciliation to pass bills down party line vote?

What was part of their -- there was one -- this is not a technical question, so I will ask it in maybe a technical way.

Was funding an additional \$80 billion to the IRS, with 87,000 IRS agents, was that part of the Democrats' major legislative agenda in the last Congress?

Mr. <u>Clerget.</u> I don't want to speak for the --

Mr. Moore of Utah. For the majority -- did they pass a bill --
Mr. <u>Clerget.</u> Yes.

Mr. <u>Moore of Utah.</u> -- to do that through the Inflation Reduction Act? Mr. <u>Clerget.</u> Yes.

Mr. <u>Moore of Utah.</u> Primarily to go after individuals that are cheating the tax system and not paying taxes, correct? Is that part of that legislative approach?

Mr. <u>Clerget.</u> My understanding is that that was part of that approach, yes.

Mr. <u>Moore of Utah.</u> I was privy to a lot of those conversations, and it was.

And it just doesn't feel like there is the same rigor, that if there are claims that somebody had received \$8.3 million from foreign entities as the son of the former Vice President and current President for several years, to completely -- so 8.3 and approximately 2.2, that is what these allegations state.

That seems like someone is trying to cheat the tax system and could potentially be -- we could dig into this and want to know more about this. Is that correct?

Mr. <u>Clerget.</u> I think that is a fair assessment.

Mr. <u>Moore of Utah.</u> It just -- it is hard to really follow this.

There were no interviews done, to your understanding and to my understanding. And their heavy criticism is that 14 hours interviewing two different individuals, that -- I don't think there is a real claim that these aren't very credible individuals and whistleblowers -- and that that is the criticism?

It is just -- it is hard to understand. But I guess I haven't been around long enough to really get how, you know, all of this partisan nature works.

And I just hope that we can, you know, get to the bottom of this, have this information available. Because there is an ongoing investigation, and this should be -- not only the House of Representatives, the American public need to understand that these are legitimate potential claims, and we need to flesh this out. So I thank you, and I yield back.

Chairman <u>Smith.</u> Mr. Beyer is recognized.

Mr. <u>Beyer.</u> Mr. Chairman, thank you very much.

Mr. Clerget, thank you for being patient with us today.

Were you part of the discussion, were you on minority staff at the time as counsel, during the 6103 discussions of President Trump's returns?

Mr. <u>Clerget.</u> I joined the committee in May 2019, and so I was part of discussions from that time forward, as oversight counsel for, at the time, minority staff.

Mr. <u>Beyer.</u> I just wanted to address my friend Mr. Kelly's concerns about equal time for minority and majority counsel. And he made the good point that minority counsel had many hours to discuss these things with the two whistleblowers.

Did your minority counsel have the same opportunity when we were discussing the Trump tax returns?

Mr. <u>Clerget.</u> I am not aware of any whistleblowers related to the Trump tax returns.

Mr. <u>Beyer.</u> But I am trying to look at where the double standard was that he was referring to. I assume that minority was treated fairly in that process also?

Mr. <u>Clerget.</u> I think that the minority in this instance has received more notice and more information than the minority received during that period of time.

Mr. <u>Beyer.</u> It has certainly been my experience that, with Chairman Neal's leadership, we always tried to treat the minority with great respect and inclusion.

Number one, I want to say I appreciate the role of whistleblowers. I think they are a very important part of an open and transparent government process and respect the fact that they have come forward.

The criminal behavior of Hunter Biden -- clearly, I think Ranking Member Neal

made the point that this is a criminal matter and not before us. But, what is before us is oversight of the IRS. The thing that is particularly concerning is the allegation that somehow Commissioner Werfel has lied about the retaliation.

On the retaliation, we have heard from the two whistleblowers. Have we heard any defense on the retaliation from the IRS yet, from Werfel.

Mr. <u>Clerget.</u> Included in the materials before you is a letter from Commissioner Werfel to Chairman Smith and copied to Ranking Member Neal.

Mr. <u>Beyer.</u> And, in reading that, they decided that the most circumspect thing to do, I assume, Mr. Clerget, was to turn it over to TIGTA, to the Department of Justice, to the inspector general; that they wanted to follow a process as carefully as possible, with many, many iterations; that they want to make sure there is no paying back of these IRS whistleblowers; and that, if there is, they wanted it to be fully explored.

There is no suggestion from the IRS leadership or the DOJ leadership that they don't want this explored, is there?

Mr. <u>Clerget.</u> I am sorry. Can you repeat the question? There is no indication?

Mr. <u>Beyer.</u> Everything that I read here suggests that the IRS had made a referral to TIGTA. They submitted a referral to the DOJ Inspector General. "We will fully cooperate with any inquiry." "The IRS Commissioner, in particular, ensures that whistleblowers are supported and protected." "... necessary corrective measures." "... seriously its obligations to support whistleblowers."

So, essentially, what we would do if we release this is to release the allegation from the whistleblowers that they have been retaliated against, without any defense, without any explanation of whether they were retaliated against.

For example, is there any indication that they were demoted, that they lost their income, that they were forced to move, that they were forced out of the IRS? Or is the

greatest allegation that he didn't get a promotion that he thought he deserved?

Mr. <u>Clerget.</u> The allegation regarding the promotion is one of the allegations. The other major one is that they allege that they were removed from this investigation, which is a change in their job responsibilities.

Mr. <u>Beyer.</u> At the same time that the investigation was elevated to a different level, to a different team, as they turned it over to DOJ.

I don't know, maybe the allegation is correct. All I am saying is that we don't have the answer to that. There is no feedback on why this allegation may not, in fact, be true.

Correct?

Mr. <u>Clerget.</u> There is no feedback -- sorry. What is the question?

Mr. <u>Beyer.</u> I think it was a pretty easy question, that right now we are only hearing one side of the story. Is that not true?

Mr. <u>Clerget.</u> I think there is a letter from Commissioner Werfel in the materials before you here.

Mr. <u>Beyer.</u> Who doesn't intend to address it. He said that they referred it to the appropriate authorities in the Inspector General's Office, TIGTA, the Department of Justice. So, they have not answered it. They simply said that they are going to make sure that it is elevated to the proper place to answer.

Mr. <u>Clerget.</u> Agencies can pursue investigations in the form that they choose, as can Congress, which has a serious oversight responsibility.

Mr. <u>Beyer.</u> Yeah. And my only concern is, we are going to hear these allegations that they have been retaliated against, but we are not going to hear the defense of those allegations.

And, with that, I yield back.

Chairman <u>Smith.</u> Mrs. Miller is recognized.

Mrs. Miller. Thank you, Mr. Chairman.

And thank you, Mr. Clerget.

The world is full of many, many people with many types of personalities. Obviously, I am not an attorney. I am not a wordsmith. I can't create pictures with words or twist words into places that I want them to be. I am not a CPA. There are numbers guys, and they deal with numbers all the time. That is what we expect out of the IRS.

I have held many different types of jobs throughout my life. I have dealt with numbers. But when I became a business owner, I went to the vo-tech and took a course in bookkeeping, because I wanted to make sure that what I was doing was right, so that I could then turn it over to the CPA, so that then, whatever moved forward, I knew I was doing the right thing.

I have had experience with children throughout my life, and what I know that I hear from the time they are little, through adulthood, to everyone sitting in this room, is they just want things to be fair. The number of times I have heard, "That just isn't fair. We want fairness."

So, if you have these numbers people dealing with numbers, numbers, numbers, numbers, and something isn't right, doesn't look right, they begin to question it. So then they try and verify, is this right now? It is? It isn't? So they go to the people above them, and they kind of get kind of pushed off to the side or whatever. That innate feeling of fairness kicks in. And so that, I believe, is what has brought this forward, is just human nature of, "This isn't right. This isn't fair."

Mr. Panetta, Mr. Schneider, several have said that Congress has more work to do to get to the bottom of all of these alleged wrongdoings. I agree with that. This is a

crucial first step -- a crucial first step.

Are there any other means by which these whistleblower charges can be brought to light?

Mr. <u>Clerget.</u> Because the information contains tax information, this is a process by which it can be reported to the full House.

Mrs. <u>Miller.</u> So our committee has more work to do, including legislation to prevent these abuses from ever happening again. I think other committees will do the same.

I would like to yield some time to Mr. Hern.

Mr. <u>Hern.</u> Thank you.

Just clarity on this issue because I am still -- I am not an attorney -- so now we are being criticized, you are being criticized, this task being criticized for contacting a corroborating witness, Whistleblower 2, to see if they wanted to offer anything, and they came in.

Did minority staff object to Whistleblower 2 being contacted, or the attorney, or however that contact was made, and that person coming in and spending the 7 hours talking to them to corroborate Whistleblower 1?

Mr. <u>Clerget.</u> Not that I am aware of.

Mr. <u>Hern.</u> Not anytime, not during the process -- because they were fully apprised of how this process went through, right? I mean, Whistleblower 2 didn't walk up or send an email saying, "I want to talk." So, they knew that you all had contacted this person that has been redacted because you wanted to corroborate what Whistleblower 1 was saying?

Mr. <u>Clerget.</u> Yes. And, as we discussed earlier, Whistleblower 2 essentially wanted to be asked to come forward, and given the status of whistleblowers and the risks

they take, that is somewhat understandable.

Mr. <u>Hern.</u> Did any of the other -- I haven't counted them up, but let's say, I think one of my colleagues said 50 witnesses -- Did any of them contact you and say, "I want to come in"?

Mr. <u>Clerget.</u> No.

Mr. <u>Hern.</u> So nobody contacted you like Whistleblower 2 did? I don't want to ask you to --

Mr. <u>Clerget.</u> We have not had other whistleblowers come forward on this matter, as of yet.

Mr. <u>Hern.</u> Okay. Okay. And I just want to confirm for the record one more time, minority staff never asked to have any of those other mentioned names in the transcripts for 14 hours, never asked to have any of them come in?

Mr. <u>Clerget.</u> I am not aware of any of those requests.

Mr. <u>Hern.</u> Thank you. I yield back to the gentlelady.

Mrs. <u>Miller.</u> I yield back.

Chairman Smith. Ms. Chu is recognized.

Ms. <u>Chu.</u> Mr. Clerget, I would like to ask questions about the accuracy of witness 2's testimony. During the interview, the second witness stated that, in early 2019, he was told, quote, that William Barr made the decision to join two investigations together, unquote. Those investigations were this case and another case opened by DOJ earlier this year.

When asked how this decision was communicated to him, he replied that it came from his supervisor at the time.

However, he recently filed a supplemental statement that, quote, on further reflection, Mr. X cannot definitively state that his then supervisor said that the

Department of Justice official directing the merger of the cases was Attorney General Barr, unquote.

Mr. Clerget, are you aware of the letter from witness 2's counsel dated June 19th? Mr. Clerget. Yes.

Ms. <u>Chu.</u> Of course, this is witness 2's supplemental testimony that casts doubt on his memory with respect to a very important piece of information.

Given that witness 2 has already recanted a portion of his earlier testimony, shouldn't the committee consider further whether the remainder of his testimony is reliable?

Mr. <u>Clerget.</u> Whistleblowers and any witnesses that sit for transcribed interviews and are subject to cross-examination, which both of these whistleblowers voluntarily subjected themselves to, it is a difficult process. It is not enjoyable for a witness to be questioned for hours, and that is why we always give witnesses the opportunity to review the transcript afterwards, make any clarifications, correct any mistakes or lapses in memory, et cetera, and that is my understanding of what this letter is seeking to do.

Ms. <u>Chu.</u> So are you saying that there could be even more things that are inaccurate with regard to witnesses 2's testimony? You are saying that it is 7 hours; they get tired. I get the idea.

Mr. <u>Clerget.</u> There aren't any that I am aware of, but of course people can make mistakes, that is possible.

Ms. <u>Chu.</u> Well, he was interviewed on June 1st. Only 18 days later, on June 19th, he recanted a portion of his testimony. That casts doubt on the accuracy of his testimony.

Now you are saying that witness 1's testimony is credible because of witness 2,

but if witness 2 lacks accuracy, then I would suggest that more interviews need to be done to corroborate his testimony already of which the witness has represented he cannot now recall with any clarity.

And, with that, I yield back.

Chairman <u>Smith.</u> Mrs. Steel is recognized.

Mrs. <u>Steel.</u> Thank you, Mr. Chairman.

I am not an attorney, but I have been living with one for the last few decades, and, you know, I just want to ask because the other side of the aisle -- that it is a sham private citizens or allegations. Are there any tax returns or tax forms for Members today?

Mr. <u>Clerget.</u> Tax forms are not included in the materials before the committee.

Mrs. <u>Steel.</u> Precisely. Is the committee voting to push an individual's tax returns into the public square?

Mr. <u>Clerget.</u> Tax returns, no.

Mrs. <u>Steel.</u> Thank you. Isn't it true that the tax information in these transcripts relates to the alleged tax crimes that have been overlooked by DOJ?

Mr. <u>Clerget.</u> That would be consistent with the testimony of the whistleblowers.

Mrs. <u>Steel.</u> So that is exactly what we are doing here. And it is really interesting on the other side of aisle because, last year, some of the hearings, one of the other-side-of-aisle members said: I have no doubt that people in this room also share the same desire to get the truth and to make sure that every citizen in this country feels that nobody is above the law.

You know what, what we are doing here is the public has to know the truth. That is what we are discussing here.

So, Mr. Chairman, I am going to yield back, but, you know, I just really want to know -- it is not just me, but every citizens in the country have to know -- nobody is above

the law, and everybody has to know the truth. That is what we are doing here in this hearing. Thank you.

Chairman Smith. Thank you.

Mr. Kildee?

Mr. <u>Kildee.</u> Thank you, Mr. Chairman. I intend to yield to Mr. Schneider, but I did have one question that is just a curiosity that I can't ignore, and that is that you have made reference several times to the conditions under which Whistleblower 2 came to provide testimony.

And the specific reference was that information came to the majority, to the Committee, indicating a willingness or an interest in testifying. Who did that come from?

Mr. <u>Clerget.</u> I believe counsel for Whistleblower 1.

Mr. <u>Schneider.</u> Okay. That helps because that clarifies what I think wasn't answered before, and that is who initiated the interaction. And it appeared to me that you had previously said that it was the committee that initiated the interaction, and I just want to make sure that there is clarity on that point.

I won't repeat all the questions that I share with my colleagues, although perhaps Mr. Schneider will, and in that vein, I will yield to him.

Mr. <u>Schneider.</u> Thank you. And more just a clarification than a question.

Mr. Clerget, when we are asking about -- I will use the words I use -- did Whistleblower 2 volunteer -- or voluntarily appear, we are not questioning the decision to interview Whistleblower 2, are we?

Mr. <u>Clerget.</u> I don't know if you are.

Mr. <u>Schneider.</u> I am not, and I don't think anyone is, but it is how you are characterizing the interview.

As I said, I am an engineer. Numbers come naturally. My dad was a CPA. It is in my blood.

But what you are saying is -- again, the words, you are trying to characterize, and you are being very careful with the way you use these words -- that Whistleblower 2 volunteered. He didn't. He came here at the request of the committee, which, as my colleague just showed, came through information from the attorney for Whistleblower 1 to the committee, who then reached out to Whistleblower 2.

All I am asking for is that we are clear on how we characterize Whistleblower 2, the testimony he provided is here in the book. But, to even to say he was a whistleblower, it was not him raising his hand and saying, "I have got something to tell you"; it was the committee reaching out and saying: We understand you have some information.

And, he has made a very specific plea: I don't want it to be public.

We should respect that. But, we should also be respectful in how we characterize his appearance before the committee. He didn't volunteer, but it was voluntary.

Mr. <u>Clerget.</u> I --

Mr. <u>Schneider.</u> I yield back.

Chairman Smith. Ms. Malliotakis is recognized.

Ms. <u>Malliotakis.</u> Thank you very much.

I had a couple of questions regarding the Whistleblower 1 testimony. On page 41, there is an exhibit 2, and that was the conclusion and the recommendation, and he signed as special agent -- he approved it actually. He approved the special agent's conclusion and recommendation for prosecution, that was based on the facts that RHB, who in this case would be Hunter Biden, be prosecuted under the provisions of title 26, U.S. Code, for the tax years 2014, 2018, 2019, and then also under the provisions of title 26, U.S. Code, section 7203, for the years 2015, 2016, 2017, 2018, and 2019.

Then it says that a draft of this recommendation was given to the DOJ tax senior attorney Mark Daly, as well as the assistant U.S. attorney, Lesley Wolf. They both reviewed it, and they agreed with the prosecution recommendation of the cited charges.

It then says, at that point -- and that was January 27th of 2022 -- after they both agreed with the recommendations in the report, it was sent to a panel at the national office who agreed with the line -- it was sent to a line attorney, then a panel at the national office where they both concur.

But then it was sent up to their two top people at the CT counsel. They sent it back to the line attorney and told her to change it to nonconcur. Right? Is that accurate?

Mr. <u>Clerget.</u> That is consistent with my understanding of the testimony.

Ms. <u>Malliotakis.</u> Okay. And did the whistleblower say that it was an odd thing that they would go back and say to change the report?

Mr. <u>Clerget.</u> I believe the whistleblowers testified that that was unusual.

Ms. <u>Malliotakis.</u> Okay. Then the report goes to the Department of Justice Tax Division on February 25th of 2022, and he said he had yet to see an approval, a discretion, or a declination. So it seems that it was sat on by somebody over at the DOJ.

Now, what is interesting, though, is that this was an 85-page report with the recommendation, but what I find interesting is the next paragraph where he says all the evidence that they had -- and it was something like, he said, up to 10,000 pages of evidence and documents to support their recommendation for these charges -- is that correct, my understanding?

Mr. <u>Clerget.</u> I believe that is consistent with the testimony.

Ms. Malliotakis. Okay. And did Whistleblower 2 speak to any of this?

Mr. <u>Clerget.</u> The transcripts speak for themselves. I can't recall whether Whistleblower 2 had insight into this specific point. I would have to check.

Ms. <u>Malliotakis.</u> Okay. Did any whistleblower indicate, when it is sent over to the Department of Justice Tax Division, waiting for approval, discretion, or declination, how long that process usually is?

Mr. <u>Clerget.</u> I believe there was a discussion of the timeframe, but I don't recall the specific timeframe off the top of my head.

Ms. Malliotakis. Okay. Thank you very much.

Chairman <u>Smith.</u> Mr. Doggett is recognized.

Mr. <u>Doggett.</u> Thank you, Mr. Chairman. Mr. Chairman, the allegations you made at the beginning of this hearing are very troubling. Indeed, I would say alarming. I don't have any interest in defending Hunter Biden. His conduct is reprehensible, and he has admitted his criminal misconduct, and I certainly am not willing to acquiesce in any retaliation against whistleblowers.

I have a somewhat more expansive view myself than some members of the committee of 6103 and the ability of this committee to use it in performing its oversight responsibilities, and so I come to this with a pretty open mind.

Mr. Clerget, as I understand it, you are the staff director of the Oversight Committee.

Mr. <u>Clerget.</u> Oversight Subcommittee, yes, sir.

Mr. <u>Doggett.</u> Yes, sir. And as such, you have been the lead staff person on this investigation?

Mr. <u>Clerget.</u> Yes.

Mr. <u>Doggett.</u> And really kind of the expert on it? You know more than any

other staff member about what has been going on in this investigation?

Mr. <u>Clerget.</u> We have some pretty impressive staff members that know quite a lot about this.

Mr. <u>Doggett.</u> But you are the leader, right?

Mr. <u>Clerget.</u> Yes.

Mr. <u>Doggett.</u> And you will recall if you look back at the work this committee did with reference to President Trump's tax returns, that included in what was released to the public, was a piece of legislation that was ultimately passed into law under leadership of Chairman Neal.

Mr. <u>Clerget.</u> I recall that piece of legislation.

Mr. <u>Doggett.</u> As a part of this investigation, have you included any legislation?

Mr. <u>Clerget.</u> No. There is no legislation included at this time.

Mr. <u>Doggett.</u> And as the expert and the staff director on Oversight, have you recommended any legislation to be considered in connection with this investigation?

Mr. <u>Clerget.</u> Not in a formal way. We have discussed potential legislative fixes, yes.

Mr. <u>Doggett.</u> All right. Well, you made reference to legislative purpose at the very conclusion of your opening statement. Have you, to date, identified any legislative purpose for the release of these documents?

Mr. <u>Clerget.</u> I believe there are a number of legislative --

Mr. <u>Doggett.</u> What are those?

Mr. <u>Clerget.</u> -- activities that the committee could consider as it proceeds with its oversight work.

Mr. <u>Doggett.</u> There are none that you have recommended to date?

Mr. <u>Clerget.</u> Not in a formal --

Mr. <u>Doggett.</u> Yes, sir. And there is no legislative purpose stated with reference to any of these documents, is there?

Mr. Clerget. Stated where?

Mr. <u>Doggett.</u> You have not included in what you propose to release, any recommendations of a legislative purpose that will be accomplished by releasing them?

Mr. <u>Clerget.</u> I don't believe a legislative purpose requires a recommendation of specific text of a bill.

Mr. <u>Doggett.</u> I am just asking if you made one, and the answer is no.

Mr. <u>Clerget.</u> Not as of yet.

Chairman Smith. He would not be the one to make one. It would be --

Mr. <u>Doggett.</u> Well, he is the expert.

Chairman <u>Smith.</u> For technical questions.

Mr. <u>Doggett.</u> As far as accountability is concerned, on the whistleblower charges, isn't a referral to the inspector general the normal way that such whistleblower retaliation issues are investigated?

Mr. <u>Clerget.</u> I think that is one of the ways that whistleblower retaliation issues are investigated.

Mr. <u>Doggett.</u> As far as the accountability of Mr. Biden, I would place in the record a letter from the Trump-appointed U.S. attorney David Weiss' office from the day before yesterday to the district clerk, noting that charges had been filed with regard to these -- this tax misconduct and one other issue -- two counts in an information, in the United States Court in Delaware, and ask that that be made part of the record.

Chairman <u>Smith.</u> Without objection.

[The information follows:]

******* COMMITTEE INSERT *******

Case 1:23-cr-00061-UNA Document 1 Filed 06/20/23 Page 1 of 1 PageID #: 1



U.S. Department of Justice

United States Attorney's Office District of Delaware

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CR23-61-UNA

June 20, 2023

<u>By Email</u>

Mr. Keith Kincaid U.S. District Court Clerk's Office U.S. District Court 844 King Street Wilmington, Delaware 19801

Re: Robert Hunter Biden

Dear Mr. Kincaid:

Enclosed, please find two Informations to be docketed in criminal matters involving the above-referenced defendant. The first Information charges the defendant with tax offenses—namely, two counts of willful failure to pay federal income tax, in violation of 26 U.S.C. § 7203. The defendant has agreed to plead guilty to both counts of the tax Information. The second Information charges the defendant with a firearm offense—namely, one count of possession of a firearm by a person who is an unlawful user of or addicted to a controlled substance, in violation of 18 U.S.C. §§ 922(g)(3) and 924(a)(2) (2018). The defendant has agreed to enter a Pretrial Diversion Agreement with respect to the firearm Information.

The defendant is represented by Christopher J. Clark. The parties jointly request that the Court schedule a consolidated Initial Appearance on the firearm Information and an Initial Appearance and Change of Plea Hearing on the tax Information charges. Original, executed copies of the Memorandum of Plea Agreement related to the tax Information, and the Pretrial Diversion Agreement related to the firearm Information, will be submitted at or in advance of the Hearing.

Respectfully submitted,

DAVID C. WEISS United States Attorney

Alie By:

Leo'J. Wise / Derek E. Hines Special Assistant United States Attorneys

Benjamin L. Wallace Assistant United States Attorney

FILED

JUN 20 2023

U.S. DISTRICT COURT DISTRICT OF DELAWARE

Enclosures CC: Christopher J. Clark Mr. <u>Doggett.</u> And, as I look through the documents, I see that around about page 93, Mr. Shapley indicated that there were a couple years that he would himself not prosecute, but I believe 2017 and 2018 were years that he thought that there were violations that should be prosecuted.

Are 2017 and 2018 the principal years here that the whistleblower said prosecution should occur for misconduct by Hunter Biden?

Mr. <u>Clerget.</u> They were included in the charges that were recommended. I am not sure whether they were the principal years, but the years were 2014 to 2019 that --

Mr. <u>Doggett.</u> Yes. Well, in his testimony that you have there, he said he wouldn't prosecute 2014, that that was too old, and 2015 was not, in his words, a huge problem, and 2017 and 2018 were the focus years, I believe.

Mr. <u>Clerget.</u> What page of the transcript are you referring to?

Mr. <u>Doggett.</u> Well, I am referring to his comments on page 93 about 2014 and 2015, and if you continue on, he complains about 2017 and 2018, which appear to be the principal charges here.

Mr. <u>Clerget.</u> The documents speak for themselves. 2014 was included in the charges recommended.

Mr. <u>Doggett.</u> One of the documents that speaks for itself is the fact that Hunter Biden, earlier this week, pled guilty to the very things that the whistleblowers were complaining about.

Mr. <u>Clerget.</u> I don't believe he pled guilty to all the charges recommended by the IRS.

Mr. <u>Doggett.</u> With regard to years 2017 and 2018, he certainly did. And I want to also offer in the record --

Chairman <u>Smith.</u> Mr. Doggett, your time has expired.

Mr. <u>Doggett.</u> All right.

Chairman <u>Smith.</u> Mr. Carey, you are recognized.

Mr. <u>Carey.</u> Thank you, Mr. Chairman.

Mr. Clerget, just a couple items that I wanted to ask. Reading through the testimony, these whistleblowers were career IRS employees. Did they have any party affiliation whatsoever?

Mr. <u>Clerget.</u> I believe that Whistleblower 1 stated that he was a registered Republican, and Whistleblower 2 identified himself as a Democrat.

Mr. <u>Carey.</u> Am I correct to say that, in reading through the testimony, neither were very politically active?

Mr. <u>Clerget.</u> Both testified that they were not politically active.

Mr. <u>Carey.</u> Okay. Also, in the back-and-forth on Whistleblower 2, it kind of reminded me of the old Abbott and Costello, who's on first, what is on second, from some of my colleagues. However Whistleblower 2 told that he wanted to -- or he had information, you would have to ask. If you were to have asked him, could he have just said no?

Mr. <u>Clerget.</u> That is correct. He appeared voluntarily before the committee.

Mr. <u>Carey.</u> Okay. There were a couple items within the letter from Mr. Werfel, you know, that I fundamentally agree with, that he said that we have got to make sure that presumed innocent until charged and proven guilty, receive due process, impartial treatment before the courts of law.

Actually, many of the things I do agree with, but then there was -- he makes a comment in here that said that, during a meeting -- because there is a lot of people asking about why we are not asking a lot of other questions.

But he makes the statement: And you asked us for the names of the IRS

personnel who have potentially relevant information about allegations of retaliation with respect to this employee. For reasons we discuss above, I do think not think it is appropriate for the IRS management to get ahead of the independent investigation.

Was this ommittee asked for some information on the names that the whistleblowers had mentioned?

Mr. <u>Clerget.</u> Was this committee asked? Sorry, can you repeat?

Mr. <u>Carey.</u> Or was Committee staff asked -- did they ask the question to the IRS about some of the names that were in the document? Because he states that we --

Mr. <u>Clerget.</u> I believe Chairman Smith asked him who were the individuals involved, yes.

Mr. <u>Carey.</u> Okay. And then, also lastly, there was a document that went out that looks to be roughly -- I am not sure when it was, through the IRS, that kind of goes through the -- if you have a whistleblower complaint, encourage employees on the way that the IRS would like them to report.

Was there any mention that they could go through a whistleblower hotline through Congress?

Mr. <u>Clerget.</u> No, sir.

Mr. <u>Carey.</u> I yield back, Mr. Chairman.

Chairman <u>Smith.</u> Mr. Davis is recognized.

Mr. <u>Davis.</u> Thank you, Mr. Chairman, and I associate my comments with those of the Ranking Member, Mr. Neal, and yield the balance of my time to Mr. Doggett.

Mr. <u>Doggett.</u> Well, thank you, and just continuing, Mr. Biden pled guilty to the very charges that the whistleblowers were talking about.

I think there is also another important aspect of this that needs to be put in the record. And I will be asking unanimous consent to include a letter that was sent to

Jim Jordan at the Committee on the Judiciary, from David Weiss, the United States attorney originally appointed by President Trump on June the 7th.

[The information follows:]

******* COMMITTEE INSERT *******



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(302) 573-6277 FAX (302) 573-6220

June 7, 2023

The Honorable Jim Jordan Chairman Committee on the Judiciary U.S. House of Representatives Washington, D.C. 20515

Dear Chairman Jordan:

Your May 25th letter to Attorney General Garland was forwarded to me, with a request that I respond on behalf of the Department.

While your letter does not specify by name the ongoing investigation that is the subject of the Committee's oversight, its content suggests your inquiry is related to an investigation in my District. If my assumption is correct, I want to make clear that, as the Attorney General has stated, I have been granted ultimate authority over this matter, including responsibility for deciding where, when, and whether to file charges and for making decisions necessary to preserve the integrity of the prosecution, consistent with federal law, the Principles of Federal Prosecution, and Departmental regulations.

Your letter references recently-announced staffing determinations in the matter and the Committee's concern that those decisions intersect with whistleblower protections. I agree wholeheartedly that whistleblowers play an integral role in promoting both civil servant accountability and good government practices. Federal law protects whistleblowers from retaliation, as well it should.

The information sought by the Committee concerns an open matter about which the Department is not at liberty to respond. As then-Deputy Attorney General Rod Rosenstein wrote in 2018 in response to a request for information from the Honorable Charles Grassley, Chairman of the Senate Committee on the Judiciary:

Congressional inquiries during the pendency of a matter pose an inherent threat to the integrity of the Department's law enforcement and litigation functions. Such inquiries inescapably create the risk that the public and the courts will perceive undue political and Congressional influence over law enforcement and litigation decisions. Such inquiries also often seek records and other information that our responsibilities for these matters preclude us from disclosing. $^{\rm 1}$

Accordingly, and consistent with longstanding Department of Justice policy and practice,² I must respectfully decline the Committee's request for documents and information at this time to protect confidential law enforcement information from disclosure.

This response fully recognizes that the Committee's oversight efforts are an important part of its legislative process. As then-Assistant Attorney General Robert Raben noted in 2000:

Congressional committees need to gather information about how statutes are applied and funds are spent so that they can assess whether additional legislation is necessary either to rectify practical problems in current law or to address problems not covered by current law. By helping Congress be better informed when it makes legislative decisions, oversight promotes the accountability of government.³

Across administrations, therefore, the Department's policy has been to:

... comply with Congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch[.] [T]he Department's goal in all cases is to satisfy legitimate legislative interests while protecting Executive Branch confidentiality interests.⁴

The confidentiality interests implicated by the Committee's instant request include legally protected materials (including grand jury information, protected by Rule 6(e) of the Federal Rules of Criminal Procedure, and taxpayer information, protected by 26 U.S.C. Section 6103); information the disclosure of which might compromise open criminal investigations or prosecutions or constitute an unnecessary invasion of privacy;

² See Congressional Requests for Information from Inspectors General Concerning Open Criminal Investigations, Memorandum Opinion for the Chairman Investigations/Law Enforcement Committee President's Council on Integrity and Efficiency, March 24, 1989, *available at* https://www.justice.gov/file/24181/download (last accessed June 2, 2023).

³Letter from Assistant Attorney General Robert Raben to The Honorable John Linder, Chairman,

¹ Letter from Deputy Attorney General Rod Rosenstein to Hon. Charles Grassley, Chairman, Committee on the Judiciary, U.S. Senate, at 10 (June 27, 2018) *quoting* Robert Raben, Assistant Attorney General, "DOJ View Letters on Subcommittee on Rules and Organization of the House testimony on 'Cooperation, Comity, and Confrontation: Congressional Oversight of the Executive Branch," July 15, 1999, *available at* https://www.justice.gov/media/962176/dl?inline (last accessed June 2, 2023).

Subcommittee on Rules and Organization of the House, Committee on Rules, House of Representatives, at 2 (January 27, 2000), *available at* https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/linder.pdf (last accessed June 2, 2023).

⁴ *Id*. at 2.

and, just as importantly here, pre-decisional deliberative communications. By way of illustration, the Department has a broad confidentiality interest in protecting materials that reflect its internal deliberative process, at least to ensure that Departmental litigation decisions are products of independent legal and factual assessments, free from external political influences. Here, any documents or information responsive to the Committee's request would fall within deliberative communications regarding an ongoing criminal investigation.

As then-Deputy Attorney General Rosenstein recognized:

We cannot fulfill requests that would compromise the independence and integrity of investigations ... or create the appearance of political interference. We need to follow the rules. It is important for the Department of Justice to follow established policies and procedures, especially when the stakes are high.⁵

I share then-Deputy Attorney General Rosenstein's "commitment to the Department's longstanding traditions, [which] carries with it an obligation to ensure that we keep pending law enforcement matters separate from the sphere of politics and that there be no perception that our law enforcement decisions are influenced by partisan politics or pressure from legislators."⁶ Here, that requires that I respectfully protect from disclosure the confidential law enforcement information the Committee seeks. My ongoing work would be "seriously prejudiced by the revelation of the direction of [the matter], information about evidence obtained, and assessments of the strengths and weaknesses of various aspects of [the matter]."⁷

In February 2021, I was asked to remain as United States Attorney for the District of Delaware to continue my oversight of the matter. Since that time, I have fulfilled my responsibilities, consistent with Department practices and procedures, and will continue to do so. Throughout my tenure as U.S. Attorney my decisions have been made-- and with respect to the matter must be made-- without reference to political considerations.

Sincerely. Veiss

United States Attorney

cc: The Honorable Jerrold L. Nadler, Ranking Member

⁵ Letter from Deputy Attorney General Rod Rosenstein to Hon. Charles Grassley, Chairman, Committee on the Judiciary, U.S. Senate, at 6, *available at* https://www.justice.gov/media/962176/dl?inline (last accessed June 2, 2023).

⁶ Id. at 7.

⁷ Id. at 4.

Mr. <u>Doggett.</u> And I just want to read into the record a sharp part of that letter. He says, while your letter does not specify by name the ongoing investigation and subject of the committee's oversight, its content suggest your inquiry is related to investigation in my district. If my assumption is correct, I want to make clear that as the Attorney General has stated, I have been granted ultimate authority over this matter, including responsibility for deciding where, when, and whether to file charges and for making decisions necessary to preserve the integrity of the prosecution consistent with Federal law, the principles of Federal prosecution, and departmental regulations.

So, I assume that if there is any sweetheart deal, the sweetheart was the Trump-appointed U.S. attorney in Delaware. He proceeds, in this 3-page letter, the full copy of which will be made a part of the record, he quotes: As then-Deputy Attorney General Rosenstein recognized, we cannot fulfill requests that would compromise the independence and integrity of investigations or create the appearance of political interference. I share then-Deputy Attorney General Rosenstein's commitment to the Department's long-standing traditions, which carries with it an obligation to ensure that we keep pending law enforcement matters separate from the sphere of politics and that there be no perception that our law enforcement decisions are influenced by partisan politics or pressure from legislators. In February 2021, I was asked to remain as United States attorney for the District of Delaware to continue my oversight of the matter. Since that time, I have fulfilled my responsibilities, consistent with Department practices and procedures, and will continue to do so. Throughout my tenure as U.S. attorney, my decisions have been made and, with respect to the matter, must be made without reference to political considerations.

I think, if anything, the politics here, and the partisanship here, is to interfere and perhaps impede the proper use of the justice system. And it seems to me that while I understand Mr. Neal will be offering a motion to make all of these proceedings open -- which I am pleased will be done, and I think it is important that the public understand the full context of this discussion -- that the most frequent answer you have given, Mr. Clerget, has been "not yet." Because "not yet" is the watch word of the investigation that has been done here.

No, you haven't gotten to the bottom of it, as one of our Republican colleagues inquired, because, as you said and the testimony will be in the record, the committee's work is not done.

It is one thing had you come here and presented us an interim report to explore what else might need to be done, if anything, but that is not what has occurred.

What has occurred is apparently an attempt to release these documents on the same day Ms. Boebert is presenting her ill-fated motion to impeach the President of the United States.

I think the allegations that were made at the beginning of the hearing are not justified by anything in the record. I think that will be apparent when the proceedings that we have had here and your answers and these documents are disclosed.

It is unfortunate, it is really an abuse, but that, I suppose, is the kind of distraction that President Trump wants. I yield back.

Chairman <u>Smith.</u> I would just like to remind the Committee that our first order of business was a motion from Mr. Smith that made everything that is being discussed here public afterwards.

Mr. Neal. Mr. Chairman?

Chairman Smith. Yes.

Mr. <u>Neal.</u> I appreciate that, but as the proceedings have played on today, we want to make sure that this is released to the public.

Chairman <u>Smith.</u> We already voted, and it is going to be released.

Mr. Wenstrup is recognized.

Mr. <u>Wenstrup.</u> Yeah, just real quick if I can. Thank you, Mr. Chairman.

You know, Mr. Beyer was talking about before the fairness during the process including the minority, and I appreciate that, and it has become fairly evident that, whether you like the process or not, it has been very fair, and including the minority in this particular process.

I do have a question for you concerning after the release of Donald Trump's taxes and the legislative purpose. Did any legislation come out after the -- I believe it did -but did any legislation come out after the release of Donald Trump's taxes, and we went through this process for his taxes?

Mr. <u>Clerget.</u> Not beyond the legislation that was referenced earlier.

Mr. <u>Wenstrup.</u> Was the minority included in marking up that legislation or discussion on that legislation, or was it just brought to the floor by the majority at that time?

Mr. <u>Clerget.</u> I believe it was just brought to the floor.

Mr. <u>Wenstrup.</u> Thank you. I yield back.

Chairman <u>Smith.</u> Seeing no further technical questions, we will go to strike the

last word. Any member wish to strike the last word?

Mr. Neal?

Mr. <u>Neal.</u> I will defer to the others, Mr. Chairman. I will close on our side at the right moment.

Chairman Smith. Ms. Sanchez?

Ms. Sanchez. Thank you, Mr. Chairman.

This morning it has been very evident that we have raised some very important

issues and concerns with respect to the investigation that is the purported reason for the rush to release this sensitive information.

First of all, we have raised the issue that documents that were used in this investigation were pulled off the internet and were never authenticated, nor could the witnesses actually authenticate them.

Second, despite both witnesses speaking about some 50 other witnesses who would have firsthand knowledge of this matter, none of those other 50 witnesses were interviewed. So, there has been no corroboration of the two witnesses allegations.

Time and time again this morning we have just heard that the two witnesses corroborate each other, but there has been no external information to corroborate what these two are alleging.

And, as a former practicing attorney, anybody can allege anything that they want at any time. People can allege that it was unfair they didn't get promotions, but unless you have the evidence to back it up, it just doesn't hold.

And, lastly, Ms. Chu raised the issue that one of the witnesses had misremembered or recanted part of their testimony. And, again, we have no corroborating documentation as to this witness' testimony as to other issues, so we are not really sure that it is that reliable to begin with.

And, the response that we seem to be getting from the other side over and over again is: Well, you had counsel in the room; minority counsel was in the room when the witnesses were deposed.

I am just going to point out, that is not an adequate response. Just because counsel was in the room doesn't mean that this investigation has been conducted in, quote/unquote, the right way, as Mr. Kelly so desperately tried to assert that it was.

But assertions do not make it fact because I suspect that, if Mr. Kelly had a legal

matter pending against him, he would be livid if 50 witnesses who would have firsthand information as to the facts asserted were never interviewed in that or if the charges against him included documents or exhibits that were never authenticated.

I mean, it is not a secret why you want to make these documents public, why you are rushing this, why the investigation hasn't been really delved into. We keep hearing that: Well, we haven't -- not yet, we haven't contacted those witnesses. Not yet, not yet.

We heard that a lot this morning.

But as Members of Congress, we have an obligation to conduct a proper investigation and not put the cart before the horse, not rush to act before we know the real facts, and in this case, you are desperate to release the documents before the investigation is really even delved into, these allegations made by the witnesses.

And, in fact, somebody on your side of the aisle said that this was, quote/unquote, a good first step. Well, this should be the final step. The final step should be: Okay, we have done a thorough investigation. We have facts. We have corroborating evidence. Now let's talk about a legislative solution, a real legislative solution that fixes whatever it is that we feel that we have uncovered.

And yet you keep saying you have uncovered things, but there is no corroborating evidence, exhibits, other witness testimony, or witnesses with firsthand knowledge.

And I am getting really tired of, in various committees, hearing that, you know, employees that didn't get promoted somehow are uncovering all this, you know, illegal conduct that is rife in these agencies.

I mean, to me, honestly a lot of times it just sounds like people with grievances, petty grievances at that, and, you know, disappointment at not getting something that they felt they were entitled to but perhaps might not have been. So, I think that this is way premature. I mean, Mr. Thompson had it right; it is not even half-baked. We are in the preliminary preliminary. If you tried to bring this case to trial, you would be laughed out of every courtroom in the country.

And, with that, I will yield back.

Chairman <u>Smith.</u> Mr. Kustoff is recognized to strike the last word.

Mr. <u>Kustoff.</u> Thank you, Mr. Chairman. I move to strike the last word. I appreciate you having today's markup today to release the transcripts from the two witnesses.

I think, to recap what we know and what we have heard this morning, a process was set up within the IRS so that employees, agents, et cetera, who work in the IRS, could come forward and blow the whistle if they saw abuse, misuse of power, waste, et cetera.

We had two witnesses that came forward voluntarily who gave statements. According to what we have heard today, there were a lot of lawyers present for both statements given by the IRS employees, counsel for the majority, counsel for the minority, apparently the witnesses' own individual counsel.

I will note, going through these transcripts, unlike when we marked up the potential release of the Trump tax returns in December, none of those documents have been redacted.

Apparently, there have been substantial or at least redactions made in these transcripts of both of the two whistleblowers.

And, Mr. Chairman, at a time when people in this Nation -- doesn't matter what political affiliation -- have lost trust in the justice system and law enforcement and investigative agencies, that is a sad statement.

A number of people who have questioned today have talked about being lawyers or former lawyers or former prosecutors. I am a lawyer. I am a former Federal prosecutor, a former United States attorney. I think it is -- for all of us, doesn't matter whether you are a lawyer or not -- we should all be concerned that people have lost faith in the system.

I note in the transcript, specifically of the first whistleblower, statement on page 28, in fact, the top of page 28, where he says the next meeting was in person on October 7th, 2022, and it took place in the Delaware U.S. Attorney's Office. This meeting, including only senior level managers from the IRS, CI, FBI, and the Delaware U.S. Attorney's Office. This ended up being my redline meeting and our investigation for me. United States Attorney Weiss was present for the meeting. He surprised us by telling us on the charges, quote: I am not the one -- I am not the deciding official on whether charges are filed, unquote.

He goes on to say he then shocked us with the Earth-shattering news that the Biden-appointed D.C. U.S. Attorney Matthew Graves would not allow him to charge in his district. And he goes on further.

These statements have been made on the record by an IRS supervisory agent who testified under oath, and we are going to presume truthfully. If he is right, this is -- I guarantee you, this is contrary to what is in the public domain as to what people think about the charges filed against Hunter Biden and the statement made Tuesday by the United States attorney in Delaware, U.S. Attorney Weiss.

And, if I could, the former United States Attorney Bill Barr gave an interview 2 days ago to Martha MacCallum on FOX News, and he talked about this investigation. He talked about other investigations.

I want to read this quote -- amazing quote from a former Attorney General of the United States, quote: Half the attorney believes there is a double standard of justice or more than half the country, he added.

The quote further says: I believe there is a double standard, and I have been an insider. And I said, even before these pleas were announced -- meaning the Biden pleas -- it was critical that the Department provide assurance to the American people that these cases are going to fairly and thoroughly follow through on, and now this burden is especially heavy, close quote.

For all these reasons, what we are doing today is appropriate and proper, and I appreciate you scheduling it today.

Thank you. I yield back.

Chairman <u>Smith.</u> Mr. Wenstrup is recognized to strike the last word.

Mr. <u>Wenstrup.</u> Thank you, Mr. Chairman.

You know, Congress does have oversight over law enforcement and the agencies. Congress creates agencies. Congress funds agencies. We cannot and should not assume infallibility of our agencies. It is our role to have oversight over them. And all Americans count on us to do just that.

See, Americans don't get to vote out people that are in agencies. We have that responsibility to flush out wrong-doings, or to applaud things that are done well.

This is a government of "we, the people" not a government of "we, the agencies." We have a role here -- a legitimate role.

I grew up as a teenager watching Watergate, and I was so proud of our Nation because both sides of the aisle, Republican and Democrat, all they were doing was seeking the truth. And, when they got the truth, it was a Republican who went to President Nixon and said: You need to step down.

We seem to have deviated from that tremendously. I am the only person on this committee that sits on Intelligence Committee and sat through the whole Russian collusion investigation, going in open-eyed that, if Donald Trump did something wrong,

then we need to take care of it.

Well, what we found out is that, if you donated to the DNC or the Clinton campaign, you paid for that dossier that was fake, that was actually colluded with, with Russians.

And I have seen no remorse whatsoever -- none. The Durham report has proved it.

I sat through impeachment and sat through that process where the Intelligence Committee was destroyed and divided, which I am grateful to say is repaired now.

But it was destroyed under that time because it became the impeachment committee, which it never belonged there.

And let me tell you, if you want to talk about whistleblowers and reaching out to whistleblowers, there is no greater expert in this body right now than Adam Schiff. And, if you want to talk about that process, go talk to him and see how it was done.

As I sit here today and I hear about allegations and kangaroo court, et cetera, the hypocrisy that I feel in this room today is appalling. And I think you all know it. Yet this carries on.

At some time, we have to all be Americans first and be about truth and justice, not a two-tiered system. Everyone here has said, no one is above the law. Then let's make sure it is carried out honestly because honesty should be nonnegotiable, and transparency is important.

Look, in my opinion, this process has been fair. Maybe it is flawed. Maybe that is something we legislate, and we change the process, but to me, it has been fair under the law as it stands today. It has been fair, and oversight ask a function of this legislative body.

You know, the complaints today intrigue me, as Mr. LaHood pointed out.

Everyone was present, both sides of the aisle. Let's move forward in a way that we can be transparent to the American people about how our agencies operate.

And we cannot do that unless we bring forward evidence, listen to whistleblowers, have the case heard, and today is just one step in that process.

And I yield back.

Chairman <u>Smith.</u> Mr. Kildee is recognized to strike the last word.

Mr. <u>Kildee.</u> I yield back. I don't need time.

Chairman <u>Smith.</u> Mr. Doggett is recognized to strike the last word.

Mr. <u>Doggett.</u> Well, the gentleman is correct that we are charged with seeking the truth, the whole truth, not half-truths, not incomplete truths, not truths based on one-sided investigations that are not yet completed, that are shoddy and haphazard, when the committee's work is not done.

And so I am pleased that all of our discussion this morning about this investigation will be fully in the public record, so that there is no hiding of anything.

I think, as a matter of procedure on the actual vote on submission, that, given the incomplete nature of the committee's work, the failure to identify a single legislative purpose for releasing the submission, that, while I view 6103 broadly, that this is not the time for that submission.

Rather, it is the time for an interim report to this committee to consider these matters and that the big rush today seems to be more timed with things that are happening outside this committee, to question the action of the Justice Department and question the President himself, since an impeachment motion is being filed this afternoon.

Under those circumstances, I am not voting to submit the report, but since it is being submitted, it is important that all of this discussion showing that what this

committee has done is to identify a significant amount of smoke but no fire.

I yield back.

Chairman <u>Smith.</u> Mr. Ferguson is recognized to strike the last word.

Mr. <u>Ferguson.</u> Thank you, Mr. Chairman.

And we have heard a lot today, and I want to go back to how we got to right here and why we started it. We have been working on a lot of other issues, and all of a sudden there is an investigation going on into a taxpayer. Okay? We don't -- this committee knows nothing about. And it goes back to 2018 -- November of 2018 is when the investigation into this taxpayer was opened.

And, as the whistleblower and the whistleblowers, I should say, make clear, this was an off-chute of a separate corporate investigation by the IRS. And we understand that the business being investigated was Only Fans, and that is not somewhere where the prayer groups are going to have their online meetings, I assure you.

To be clear, the issue before us is an investigation that occurred during the ordinary course of work at the IRS. It was not ordered by an individual or political entity. It was not a political or a personal attack.

Hunter Biden is implicated. Hunter Biden was implicated in a separate corporate investigation. And this matter is only before us today because two whistleblowers came forward after finding serious misconduct in that investigation.

And so, as we consider what to do with this going forward, I think it is important to note, this committee should look into things that are needed to make sure that this alleged abuse of power simply never happens again to any taxpayer.

With that, Mr. Chairman, I yield back.

Mr. Neal. Mr. Chairman?

Chairman Smith. Mr. Neal?

Mr. <u>Neal.</u> Thank you, Mr. Chairman.

We have heard the case presented to us today. It clearly is not ready for public consumption, but I am glad it is going to get out there. If this were a Little League game, the mercy rule would have stopped it in the third inning.

There has been little preparation for this case, compared to the argument that some have made, including my friend as we want to wish him a happy birthday from Utah, when we referenced the Trump tax case. How about three and one-half years and four Federal court decisions that affirmed our position, as I avoided press conferences, inadvertent comments in the hallway, and no fundraising, in meticulous preparation for the case.

Republican-appointed judges and Democratic-appointed judges sided with my position. Judge McFadden said: Dismiss the politics, Neal is right on the law.

That is what we are asking for today.

It is clear that there are inferences here but not a full analysis. This committee is not a law enforcement committee, and to suggest that we are going to turn this over to other committees simply so that they can pursue the case is ill-advised.

We needed this case to be carefully prepared and come back to us because the minority is not defending alleged criminality. We want the U.S. attorney in Delaware to continue their work. The Justice Department has said their work is not over. As we have heard the arguments back and forth today, one of the clear assumptions, as one member on the other side said, I know that this was not -- or I wish this was more -- rigorous. Well, it can't be rigorous if it is presented in this manner.

We would have been happy to proceed, and let me just say something again for those who weren't on the committee. When we did a similar sitting in executive session, our Republican colleagues got up and walked out.
When I was asked at the time by Mr. Brady if he could review the documents, the lawyers said: That is not a good idea.

And I said: Let him review the documents; I trust his judgment.

We proceeded on that sort of a bipartisan basis.

When it was suggested that we shut down the opportunity for the minority to review all those documents, I objected. Give them as much time as they want. That is the way that this should be handled. Ours was done in full public view.

And a reminder, no press conference ever took place until the Supreme Court unanimously ruled in our favor. That is when the press conference took place, at the very end. We did not attempt to question anybody's integrity. My attorneys pushed back with me a couple of times because, not being an attorney, I was prepared to give some emotion, which is always a bad idea around here. Instead of proceeding, again, in a carefully analyzed submission.

Those opinions, as offered by those four Federal court decisions, the reasoning from the judges is superb, all of them suggesting that the case was meticulously presented.

So, in the hallway, again, when reporters would say to me, there are elements of your own party that think you are not going fast enough, a good lesson around here, sometimes it is a good idea to stand up to elements of your own party on these issues.

We prevailed in the Supreme Court -- unanimously.

I ask today, as we prepare ourselves for this information going public, as Mr. Doggett has carefully noted, I disagree with the process that has been employed here and intend to vote "no," but I am glad that this documentation is going to be submitted to the public forthwith.

I yield back my time.

Chairman <u>Smith.</u> Mr. Schweikert is recognized to strike the last word.

Mr. <u>Schweikert.</u> Well, thank you, Mr. Chairman, and I am going to go slightly more philosophical. One of my great concerns is Americans don't believe in institutions anymore. People on the left, the right, what do we believe in? We don't believe in our church. God knows we don't believe in our government.

There was a time if this was somewhat flipped, my brothers and sisters, particularly on the left, and some of us who are sometimes heretics on the right, whistleblowers were supposed to be sort of the American ethos. It was one of the ways we kept our bureaucracies on a true path.

Whether we are thrilled or not thrilled, the process of whistleblowers being protected is something a number of you in this room worked really hard on over the last couple decades, that they wouldn't suffer, you know, punishment, for basically bringing acts they considered wrong or against policy or even illegal.

But there is no purification process if that whistleblower's story and message is not made public because ultimately public view is the ultimate sunshine of keeping us honest.

And I believe the more open we are with our society, more open we are with some things that make us uncomfortable, some things that make us prideful, but that openness may be the first step to starting to rebuild some faith in our institutions.

I am not thrilled with some of the comparisons here to the whistleblower complaints and the Trump taxes. I see lots of diversions. You know, in many ways, they are different things.

But if we have employees come forward and have a story saying they see bad acts, how many years should we sit on that? I hope actually, for many of us when we talk about this, it is less talking about this is about the President's son; it is more the bureaucracy, your faith in the bureaucracy, or the fact that, when the bureaucracy basically moves away from faithful actions, they get exposed.

Look, if I get asked to talk about this, I am not going to talk about the President's son. I am going to talk about the relationship of justice and its influence, and IRS and its influence, and the fact, look here, you had IRS employees that cared so much about doing their job well, they were actually -- wanted to come forward saying they thought they saw things in the process that were wrong.

In some ways, for many of you who have advocated the IRS' purity, you should be elated at this moment. Look, they are trying to be honorable.

It also does bring some discussion that we are going to have to face, maybe not in this committee but others, of the politicization of personalities, of difficulties when it is a high-profile case and what are the rules.

But I don't know how we get back, as a society, back to some faith in our institutions unless we do things like this. The fastest way to fix a problem is admit it exists and then move forward, take your lumps, and then we move forward and fix it.

With that, I yield back.

Chairman Smith. Mr. Larson is recognized.

Mr. Larson. Thank you, Mr. Chairman.

This indeed has been an important hearing in so many respects, and I intend to vote "no." I also want to echo the words of the ranking member and Lloyd Doggett in saying that I want this full testimony released because, when you listen to members on this committee and you listen to the questions that were asked of attorneys and the general public gets to hear all this, especially all the background and information, I am very content with the American people making up their own minds and seeing how the process does work. And, with that, I yield to Mr. Neal.

Mr. <u>Neal.</u> Thank you very much. I just want to make a reference to my friend Mr. Schweikert's comments, because he is right; we would probably draw a different conclusion or path to get there, but he is right about our institutions, which clearly have been under assault for a long, long period of time.

I did not intend today to raise the Trump tax case. I advised our own side there was no reason to bring it up because we thought it was false equivalency. But the other side brings it up, so we felt that we then had to respond.

Our case was so meticulous, so issue-driven, so prepared to be put under the magnifying glass of critical analysis, that we found a letter that Richard Nixon wrote to Wilbur Mills, who is staring at us as I speak, in which he asked that his tax returns be released to the public. That was a very important part of the Federal court's determination and decision.

Again, meticulous preparation, every conceivable perspective weighed, and then we answered. In those court documents, the rigorous questioning that went back and forth between the attorneys will make for a great law school read someday.

Everything, again, was put under the magnifying glass. But deliberation was precisely that: deliberation.

And you know what I am really proud of today in that case? No leaks. Never once did we leak and surely never once did I leak one word to one favored journalist that I thought then could promote my case. That is not the example we are following this morning.

Mr. Thompson is right, this is not ready.

I yield back.

Chairman <u>Smith.</u> Ms. Van Duyne is recognized to strike the last word.

Ms. Van Duyne. Thank you very much, Mr. Chairman.

I would like to quote from our current Ranking Member, former Chairman, in a statement that he had put out in 2020. It says: This reporting shines a stark light on the vastly different experience people with power and influence have when interacting with the Internal Revenue Service than the average American taxpayer does. It appears that the President has gamed the Tax Code to his advantage and used legal fights to delay or avoid paying what he owes.

We are on the same page. We are frustrated with seeing the IRS being supposedly used as a political tool.

I have got a lot of questions about what is going on. And, when you read that transcript, you should, too.

According to the information that we have gotten from the whistleblowers, all the elements of three tax-related crimes were met. However, charges were not brought against the taxpayer.

Moreover, efforts by IRS agents to obtain evidence were repeatedly delayed, curtailed, or blocked by the prosecution team, and that includes tipping off subjects or defense counsel about upcoming interviews, telling investigators not to ask certain questions during interviews with subjects, refusing to allow investigators to obtain search warrants for locations believed to have relevant evidence, withholding evidence from investigators. And the whistleblowers both noted how the subject and the White House transition team -- let me repeat that -- the White House transition team were both tipped off before the IRS could even interview the subject, Hunter Biden.

If this is merely prosecutorial discretion and not political interference, why would the White House transition team be notified when the subject was to be interviewed? not clearly support all elements of the crime, but that is clearly not the case here. All elements of the crime were met, despite roadblocks and interference, including evidence being withheld from the investigative team, U.S. attorney in multiple jurisdictions declining to bring charges, and U.S. Attorney Weiss being denied special counsel status.

I am particularly interested in what appears to be obstruction of justice by Assistant U.S. Attorney Lesley Wolf, and I definitely think that that is something that we need to look into.

I am going to quote another member of this committee: The American public has a right to know of this alarming state of affairs, but they should not just take our word for it. They also need to see for themselves why this is important.

Ms. Chu, I could not agree with your statement any more.

We are here today to ensure that these serious allegations do not get buried forever and to ensure that the full House of Representatives can receive this information.

I think transparency is in order, and I am going to support having this all made public and transparent to the American public.

I yield back.

Chairman <u>Smith.</u> Mr. Feenstra is recognized to strike the last word.

Mr. <u>Feenstra.</u> Thank you, Chairman.

Thank you for holding this hearing. I think it is just so important. When you have two whistleblowers that come forward that want to talk because they are not being heard by their agency. That absolutely compels Congress to act. And this is our job. As Congress, we have oversight. We, in essence, are required to do this.

And I think of what has been said and what the public sees. And this is what the public sees -- and I will look at it from the public's eye -- that they lose faith because they see privilege. Even I subjectively see privilege here.

My childhood icon, Pete Rose, who sold memorabilia and didn't pay tax on it, spent months in prison. My other childhood icon, Darryl Strawberry, \$500,000 in tax evasion, spent 3 months in prison. And you can go on and on.

And the common person that has spent time in prison, and, yet -- and, yet, this gentleman, Hunter Biden, got off on probation for things that are far worse.

And it begs the question that we have been working on this for well over several months, and it was coming to a conclusion -- it was coming to a head, and all of a sudden, the IRS this past week says: We settled. We settled.

Why so quickly? It begs the question.

And this is why the public gets so concerned, and this is why the public sees and worries about double standards in our agencies.

So, I thank our Chairman and their staff for moving forward. I look for more work being done in this case. And hopefully we can resolve it and create an opportunity where everything is open to the public, and the public can decide whether there is a double standard or not.

Thank you, and I yield back.

Chairman <u>Smith.</u> Are there additional members that wish to strike the last word? Seeing none, are there any amendments?

Seeing none, Mr. Schweikert, you are recognized for a motion.

Mr. <u>Schweikert.</u> Mr. Chairman, I move that the Committee submit to the House of Representatives the materials that were under consideration today, which are comprised of the transcripts of the interviews with the whistleblowers, their supplemental materials, and the letter from the IRS Commissioner Werfel dated June 7, 2023.

Chairman Smith. The Committee will return to open session to vote on the

motion offered by the gentleman from Arizona. Prior to opening the doors, all materials under consideration will be collected by designated staff.

Yes. Mr. Neal?

Mr. <u>Neal.</u> Mr. Chairman, could you clarify the position as to what actually can be discussed as we leave this room, or as the media descends on the room, so that we are clear? I know, in your opening statement, you offered some parameters, but we would like to understand what can be suggested because 6103 is pretty tight.

Chairman <u>Smith.</u> Yes. If this motion is adopted by Mr. Schweikert, any discussion that was within this executive session, thanks to Representative Smith's motion at the very beginning, will be made public. So, you could talk about anything that was discussed in the executive session -- along with all the whistleblower depositions -- everything that is not redacted.

Mr. <u>Neal.</u> Okay. Thank you.

Mr. <u>Schneider.</u> Mr. Chairman, all the discussion today that is transcribed, is that also to be public?

Chairman <u>Smith.</u> Yes. That was Representative Smith's very first motion when we started.

Mr. <u>Doggett.</u> Do you have an estimate of when you think that transcript will be available?

Chairman <u>Smith.</u> As quickly as doable. We like to do things fast on our side.

Is the room open?

The question is on the motion from the gentleman from Arizona.

The clerk will call the roll.

The <u>Clerk.</u> Mr. Buchanan?

Mr. Buchanan. Yes.

Mr. Smith of Nebraska?

Mr. Smith of Nebraska. Yes.

The <u>Clerk.</u> Mr. Smith of Nebraska, yes.

Mr. Kelly?

Mr. <u>Kelly.</u> Yes.

The <u>Clerk.</u> Mr. Kelly, yes.

Mr. Schweikert?

Mr. <u>Schweikert.</u> Yes.

The <u>Clerk.</u> Mr. Schweikert, yes.

Mr. LaHood?

Mr. LaHood. Yes.

The <u>Clerk.</u> Mr. LaHood, yes.

Dr. Wenstrup?

Mr. Wenstrup. Yes.

The <u>Clerk.</u> Dr. Wenstrup, yes.

Mr. Arrington?

Mr. Arrington. Yes.

The <u>Clerk.</u> Mr. Arrington, yes.

Dr. Ferguson?

Mr. Ferguson. Yes.

The <u>Clerk.</u> Dr. Ferguson, yes.

Mr. Estes?

Mr. Estes. Yes.

The <u>Clerk.</u> Mr. Estes, yes.

Mr. Smucker?

Mr. Smucker. Yes.

The <u>Clerk.</u> Mr. Smucker, yes.

Mr. Hern?

Mr. <u>Hern.</u> Yes.

The <u>Clerk.</u> Mr. Hern, yes.

Mrs. Miller?

Mrs. Miller. Yes.

The <u>Clerk.</u> Mrs. Miller, yes.

Dr. Murphy?

Mr. Murphy. Yes.

The <u>Clerk.</u> Dr. Murphy, yes.

Mr. Kustoff?

Mr. Kustoff. Aye.

The <u>Clerk.</u> Mr. Kustoff, yes.

Mr. Fitzpatrick?

Mr. Fitzpatrick. Yes.

The <u>Clerk.</u> Mr. Fitzpatrick, yes.

Mr. Steube?

Mr. <u>Steube.</u> Yes.

The <u>Clerk.</u> Mr. Steube, yes.

Ms. Tenney?

Ms. Tenney. Yes.

The <u>Clerk.</u> Ms. Tenney, yes.

Mrs. Fischbach?

Mrs. <u>Fischbach.</u> Yes.

The <u>Clerk.</u> Mrs. Fischbach, yes.

Mr. Moore?

Mr. Moore of Utah. Yes.

The <u>Clerk.</u> Mr. Moore, yes.

Mrs. Steel?

Mrs. Steel. Yes.

The <u>Clerk.</u> Mrs. Steel, yes.

Ms. Van Duyne?

Ms. Van Duyne. Yes.

The <u>Clerk.</u> Ms. Van Duyne, yes.

Mr. Feenstra?

Mr. Feenstra. Yes.

The <u>Clerk.</u> Mr. Feenstra, yes.

Ms. Malliotakis?

Ms. Malliotakis. Yes.

The <u>Clerk.</u> Ms. Malliotakis, yes.

Mr. Carey?

Mr. <u>Carey.</u> Yes.

The <u>Clerk.</u> Mr. Carey, yes.

Mr. Neal?

Mr. <u>Neal.</u> No.

The <u>Clerk.</u> Mr. Neal, no.

Mr. Doggett?

Mr. Doggett. No.

Mr. Thompson?

Mr. <u>Thompson.</u> No.

The <u>Clerk.</u> Mr. Thompson, no.

Mr. Larson?

Mr. Larson. No.

The <u>Clerk.</u> Mr. Larson, no.

Mr. Blumenauer?

Mr. <u>Blumenauer.</u> No.

The <u>Clerk.</u> Mr. Blumenauer, no.

Mr. Pascrell?

Mr. Pascrell. No.

The <u>Clerk.</u> Mr. Pascrell, no.

Mr. Davis?

Mr. <u>Davis.</u> No.

The <u>Clerk.</u> Mr. Davis, no.

Ms. Sanchez?

Ms. Sanchez. No.

The <u>Clerk.</u> Ms. Sanchez, no.

Mr. Higgins?

Mr. Higgins. No.

The <u>Clerk.</u> Mr. Higgins, no.

Ms. Sewell?

Ms. Sewell. No.

The <u>Clerk.</u> Ms. Sewell, no.

Ms. DelBene?

Ms. DelBene. No.

The <u>Clerk.</u> Ms. DelBene, no.

Ms. Chu?

Ms. <u>Chu.</u> No.

The <u>Clerk.</u> Ms. Chu, no.

Ms. Moore?

Ms. Moore of Wisconsin. No.

The <u>Clerk.</u> Ms. Moore, no.

Mr. Kildee?

Mr. <u>Kildee.</u> No.

The <u>Clerk.</u> Mr. Kildee, no.

Mr. Beyer?

Mr. <u>Beyer.</u> No.

The <u>Clerk.</u> Mr. Beyer, no.

Mr. Evans?

Mr. Evans. No.

The <u>Clerk.</u> Mr. Evans, no.

Mr. Schneider?

Mr. Schneider. No.

The <u>Clerk.</u> Mr. Schneider, no.

Mr. Panetta?

Mr. Panetta. No.

The <u>Clerk.</u> Mr. Panetta, no.

Chairman Smith?

Chairman Smith. Yes.

The <u>Clerk.</u> Chairman Smith, yes.

Chairman <u>Smith.</u> The clerk will report the vote.

The <u>Clerk.</u> The ayes are 25. The noes are 18.

Chairman Smith. There being 25 ayes and 18 noes, the motion is agreed to, and

the materials are submitted to the House of Representatives.

Without objection, members have 2 additional days to file with the

Committee clerk supplemental, additional, dissenting, or minority views.

There being no further business before the committee, the committee stands adjourned.

[Whereupon, at 11:13 a.m., the committee was adjourned.]